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Friday
July 5, 1985

Selected Subjects

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Reader Aids
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends § 54.27 of the regulations governing the grading and certification of meats, prepared meats, and meat products (7 CFR 54.27) by increasing the fees and changing the method of charging for voluntary Federal meat grading and certification services to reflect increased program operating costs and to more equitably distribute the program's overtime costs.

EFFECTIVE DATE: July 14, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin, Chief; Meat Grading and Certification Branch, Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638-S; Washington, D.C. 20250. (Telephone 202/382-1113.)

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to section 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*). William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities.

This rule raises fees to cover increased costs of providing voluntary Federal meat grading and certification services. This rule also changes the method of charging for services to more equitably distribute the program's overtime cost by directly assessing the premium hourly charges to those users of the service whose plant operational schedules require overtime service. However, on a nationwide basis, the new fee and the method of charging for premium hours will not measurably affect the average cost per unit graded and/or certified currently borne by all entities using the services. Consequently, these two changes will not significantly affect a substantial number of meatpackers, meat processors, consumers, or any small entities and will not affect normal competition in the marketplace.

Background

The Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat which they desire. The AMA also authorizes the collection of fees from users of Federal meat grading and certification services which are approximately equal to the cost of providing services. The hourly fees for service are based on projected annual program operating costs and the estimated hours of service—revenue hours—provided to users of the service. Program operating costs include salaries and fringe benefits of meat graders, supervision, travel, training, and all administrative costs of operating the program. Revenue hours include base hours—service performed between 6 a.m. and 6 p.m., Monday through Friday; premium hours—service performed before 6 a.m. or after 6 p.m., in excess of 8 hours per day, Monday through Friday, and any time on Saturday or Sunday; and holiday hours—service performed on Federal legal holidays. As program operating costs increase or revenue hours decrease, the hourly fee rates must be adjusted so that the program remains financially self-supporting as required by law.

The Agency projects that the total revenue earned during fiscal year 1985 will be less than the amount earned during fiscal year 1984 because of a reduction in the number of hours meat grading and certification services are utilized by meatpackers and meat processors. The projected decline in revenue hours, including premium hours, primarily results from meat industry automation, reduced operations of smaller plants, and the Agency's increased use of statistical sampling in meat certification operations.

To offset the projected reduction in revenue, the Agency was able to reduce operating expenses in such areas as (1) contracted services for training, (2) employee travel and subsistence costs, and (3) administrative costs. These actions enabled the Agency to reduce total program operating expenses. However, these cost savings were more than offset by the increase in employee salary and fringe benefits and by the increase in the Agency's contribution to social security and medicare taxes. Both of these cost increases were mandated by Congress. Because employee salary and fringe benefits comprise approximately 80 percent of the total Meat Grading and Certification Branch annual operating expenses, total program operating costs increased. The Agency is unable to effect further nonsalary cost reductions to offset these cost increases without adversely affecting the program's ability to provide timely and uniform grading and certification services. Consequently, the Agency must increase the hourly fee rates for meat grading and certification services.

Comments

On March 25, 1985, the Agricultural Marketing Service (AMS) published in the **Federal Register** (50 FR 11814) an interim final rule increasing the fees for Federal meat grading and certification services effective March 31, 1985. This rule was implemented on an interim basis without a prior proposal because increased revenues were needed immediately to cover the increased costs of providing service. Simultaneously, AMS published in the **Federal Register** (50 FR 11816) a proposal to change the criteria for charging for services during certain premium hours. The interim rule and the proposed rule were published with requests for comments as a means of providing full public participation in the rulemaking process. Comments on

these amendments were requested by April 30, 1985. During the 30-day comment period, the Agency received four letters in response to the interim final rule and proposed rule. Two letters were received from meat associations, one letter from a meat packing and processing firm, and one letter from a national farm organization.

Discussion of Comments

The comments reflected an overall dissatisfaction with the fee increase and expressed the view that any increase during the current economic plight of the meat industry was excessive and not justifiable. The comments contained general observations on increasing the fee rates and suggested that USDA take action to reduce program operating expenses in lieu of increasing the fees.

The Agency acknowledges the need for and importance of cost reduction efforts and is continually looking for and implementing effective and viable cost reduction procedures compatible with its ability to continue providing the type and amount of service requested by the meat industry. During the past several years, the Agency has reduced both the direct and indirect costs and improved the efficiency of meat grading and certification services to help offset increasing costs. For example, the Agency has been able to reduce its grading staff by approximately 15 percent over the past 2 years. This staff reduction was achieved even though the total volume of meat graded and certified has remained about the same. This staff reduction resulted in an estimated $1.8 million savings in the industry's cost for meat grading and certification services. During the same time period, further reductions in program operating costs have occurred as a result of (1) closed field offices, (2) reduced supervisory and Washington staff positions, (3) reduced Agency and Department support service costs, and (4) reduced meat grader training and travel costs. These reductions have decreased program operating costs by approximately $1.3 million. As a result of these cost reductions, the Agency has kept meat grading and certification fee rate increases to a minimum and well below overall price increases nationwide. Further reductions at this time would adversely affect the program's ability to provide timely and uniform grading and certification services.

One commenter was also concerned that the increased fee rate may render grading and certification economically unfeasible for users of the service. The Agency believes that the financial impact of the fee rate increase on the industry and the consumer will be minimal. Even though meatpackers and meat processors will pay more per hour for service, the meat industry as a whole will be using less total hours of service. However, since the total volume of meat graded and certified is expected to remain about the same, the cost per unit for grading and certification services to the industry will continue to be less than two-tenths of a cent per pound.

One commenter expressed concern about the $3 per hour increase—from $5 to $8 per hour—in the premium hourly rate. The commenter questioned why the premium hourly rate was being increased by 12 percent when the base hourly rate was being increased by only 3.1 percent. The premium hourly rate was increased proportionally more than the base rate to more accurately reflect current program costs for providing services during premium hours. The differential between the premium rate and the base rate has not been adjusted in 4 years, despite Federal employee pay increases and other increases in program costs during that time.

The premium hourly rate for meat grading and certification service is established by estimating the program's additional costs for providing service during these premium time periods. This method provides an equitable assessment of program costs to those establishments directly responsible for these additional costs. The $8 an hour difference is comprised of approximately 80 percent for grader salary costs, 15 percent for additional supervisory salary and travel costs, and 5 percent for administrative and overhead costs. The premium hourly rate differential usually includes the following costs: (1) Employee overtime—an additional amount equal to half of the employee's base hourly pay rate, (2) employee night differential entitlements—an additional amount equal to 10 percent of the employee's base hourly pay rate, (3) employee night differential and overtime pay entitlements for work performed in excess of 8 hours per day or 40 hours per week at the night differential rate, (4) estimated costs for additional supervision and related travel for periods outside the established workday, and (5) estimated administrative costs attributed to assignments during premium hours.

The actual additional cost for each assignment varies depending upon the employee's pay level, overtime and/or night differential entitlements, estimated additional supervision and related travel costs, and estimated administrative costs. However, to avoid the additional administrative burden and costs associated with a variety of premium rates which reflect each assignment possibility, only one premium rate is charged for service during premium hours. This method of charging has proven to be the most efficient administrative billing system at the least possible cost to the users of the service.

As an additional alternative to increasing the difference between the base and premium rates, the Agency considered a greater increase in the base hourly rate to cover the added cost of providing services during premium hours. However, this alternative would have resulted in an inequity of charges by requiring all users of the service to pay a portion of the program's overtime operating costs.

One commenter urged the Agency to look carefully at its ratio of graders to supervisors and stated that the present ratio of graders to supervisors appears to be unjustified. The commenter cited a grader/supervisor ratio of 7 to 1. It is assumed that the commenter was basing that ratio on all Branch management personnel, rather than just the first-line supervisors. The Agency considers only the first-line supervisors in its grader/supervisor ratio because only such supervisors work closely with graders on a day-to-day basis. Other higher level supervisors are responsible primarily for overall program management and administration. The present ratio of graders to first-line supervisors is approximately 11 to 1, which is about the same as a year ago. This ratio, however, does not include supervision of intermittent (part-time) employees or cross-utilized employees who are used to provide more cost-effective service to the industry. There has been a significant increase in the cross-utilization of employees in the past 2 years which has contributed to lower costs for grading and certification services to the meat industry. Unlike fulltime journeymen meat graders, both groups of employees require considerably more on-the-job training and supervision. When these employees are considered with the full-time employees, the ratio of graders to first-line supervisors is about 14 to 1. Additionally, the overall workload of first-line supervisors has been affected by recent cost-saving changes in employee training, i.e., reducing the length of new employee training and discontinuing journeymen grader refresher training. These changes shifted a significant amount of training responsibility to the first-line supervisors. This increased workload

ultimately affects the number and type of employees a supervisor can effectively supervise. Any immediate reduction in the Agency's supervisory staff would hamper its ability to provide the necessary amount of onsite supervision for grading and certification work and to respond to industry requests for supervisory reviews in a timely manner. Likewise, reductions in the supervisory staff may limit the program's ability to implement new cost-saving procedures or expand existing ones. Nevertheless, the Agency will continue to review and evaluate the grader/supervisor ratio and effect reductions in field supervisory positions as circumstances and conditions permit.

One commenter objected to the proposed ruling which would change the method of charging for overtime hours to include all hours over 8 hours between 6 a.m. and 6 p.m., Monday through Friday, as opposed to the current method of charging base hours for all hours of service performed between 6 a.m. and 6 p.m., Monday through Friday. This commenter suggested that the Agency negotiate with its labor union so that overtime pay would not be paid until after a 40-hour regular workweek has been completed. The Agency's hourly pay rates and the overtime pay entitlements are governed by Title 5 of the U.S. Code and the Fair Labor Standards Act. These laws require the Agency to pay eligible employees overtime pay for all hours worked over 8 hours per day, as well as over 40 hours per week. Consequently, there are occasions when the Agency must pay meat graders at an overtime salary rate while users of the service are being charged only the base hourly rate. For example, a plant utilizing a meat grader for 10 hours per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., currently is charged for 10 hours at the base hourly rate each day. The meat grader providing such services is paid for 8 hours at a base salary rate and for 2 hours at an overtime salary rate. As a result, the Agency is unable to recover its costs through the present method of charging for these premium hours. However, as a means of reducing these overtime costs, the Agency has been exploring alternative tours of duty. These alternative tours of duty have been a topic of previous collective bargaining sessions with the union, and such alternative tours may be reconsidered, pending the resolution of an issue regarding workweek.

In view of the foregoing, it has been decided that the base hourly rate for voluntary Federal meat grading and certification services for 8 hours or less of work performed between 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays, will be increased from $25.60 to $26.40 per hour. The premium hourly rate for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on Federal legal holidays, the hourly fee will be increased from $30.60 to $34.40. The holiday hourly rate for Federal legal holidays will be increased from $51.20 to $52.80.

Pursuant to the authority in 5 U.S.C. 553, it has been determined that other public procedure and notice with respect to these amendments are impractical and unnecessary and good cause is found for making these amendments effective as a final rule less than 30 days after publication of this document in the **Federal Register**. The premium hourly rate will be charged for those hours worked in excess of 8 hours per day beginning July 1, 1985.

Accordingly, the section of the regulations appearing in 7 CFR Part 54 relating to hourly fees for Federal grading and certification of meat, prepared meats, and meat products is amended as set forth below:

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, and Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR 54.27(a) is revised to read as follows:

§ 54.27 Fees and other charges for service.

* * * * *

(a) *Fees Based on Hourly Rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including the official grader's travel and certificate(s) preparation time in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request, notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate shall be $26.40 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $34.40 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on Federal legal holidays; and $52.80 per hour for all work performed on Federal legal holidays.

* * * * *

Done at Washington, D.C.: June 28, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-16068 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 84-024-F]

Alpha-Tocopherol as an N-nitrosamine Inhibitor in Pump-Cured Bacon; Lecithin as an Emulsifier in Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned by Hoffman-LaRoche Inc. and the Diamond Crystal Salt Company to amend the Federal meat inspection regulations to permit the use of d- and dl-alpha tocopherol as an inhibitor of N-nitrosamine formation in pump-cured bacon products. In conjunction with these petitions FSIS has also been petitioned by Diamond Crystal Salt Co. to amend the Federal meat inspection regulations to allow lecithin as an emulsifying agent to incorporate the d- and dl-alpha-tocopherol into pumping solutions used in bacon processing. Additionally, FSIS has been petitioned by Central Soya Company to allow lecithin as an emulsifier in meat food products. All of these substances are either listed by the Food and Drug Administration (FDA) as "generally recognized as safe" (GRAS) for use in foods or are approved food additives. This final rule amends the Federal meat inspection regulations to permit the use of d- and dl-alpha-tocopherol as an inhibitor of N-nitrosamine formation in pump-cured bacon and the use of lecithin as an emulsifier in meat food products. The petitioners have supplied the Agency with sufficient information to satisfy the requirements of 9 CFR 318.7(a)(2).

ADDRESS: Written comments to: U.S. Department of Agriculture, Food Safety and Inspection Service ATTN: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, USDA, Washington, DC 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices to consumers; to individual industries; to Federal, State, or local government agencies; or to geographic regions. This final rule will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises in domestic or export markets.

This final rule provides for the optional use of d- and dl-alpha-tocopherol as a nitrosamine inhibitor in pump-cured bacon and the use of lecithin as an emulsifying agent in processed meat food products. Current regulations do not provide for the use of these substances for the purposes intended. Industry will benefit from this action by gaining the opportunity to use an additional nitrosamine inhibitor and dispersing and emulsifying agents and the public will benefit through the introduction of safe, functional ingredients into the food supply.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule will impose no new compliance or reporting requirements on industry. The promulgation of this rule will merely authorize the discretionary use of an additional nitrosamine inhibitor in bacon and an additional emulsifier in processed meat food products.

Comments

This is a final rule consistent with the provisions of § 318.7 of the Federal meat inspection regulations (9 CFR 318.7). As such, comments have not been solicited. However, interested persons should inform the Administrator of any facts which raise questions about this action within the 60 day period between the publication and effective date of this rule.

Background

Alpha-Tocopherol: The Department has been petitioned by Hoffman-LaRoche Inc., Nutley, New Jersey and Diamond Crystal Salt Company, St. Clair, Michigan to amend existing regulations to allow the use of d- and dl-alpha tocopherol as a nitrosamine inhibitor in pump-cured bacon products. The petitioners assert that this substance is effective as a blocking agent in preventing the formation of N-nitrosamines in bacon.

Researchers at the USDA Eastern Regional Research Center (ERRC) in Philadelphia, Pennsylvania demonstrated in 1973 that the incorporation of ascorbate and/or erythorbate into the curing mixture used to prepare frankfurters, greatly reduced the amount of nitrosodimethylamine (NDMA) in the end product. The mechanism of this protective effect by ascorbic acid is currently believed to be the ability of ascorbic acid to successfully compete with susceptible amines for the available nitrite ion.

In 1978, the USDA published a final rule for pump-cured bacon (43 FR 20992; May 16, 1978; 9 CFR 318.7(b) (1)&(2)), which requires sodium ascorbate or sodium erythorbate to be used at a level of 550 parts per million (ppm) as an inhibitor of nitrosamine formation.

Much effort has gone into developing means of suppressing N-nitrosamine formation in fried pumped bacon by the use of appropriate blocking agents. In 1976, the American Meat Institute conducted a study which demonstrated that d- and dl-alpha-tocopherol was effective in preventing nitrosamine formation. In 1977, researchers at ERRC also demonstrated that d- and dl-alpha-tocopherol was an effective blocking agent for the formation of nitrosamines.

In 1979 Bharucha et al. (J. Agr. Food Chemistry 27:63, 1979) postulated that the essential, but probably not the only, requirements for a potential blocking agent in bacon are:

1. The ability to trap nitrous oxide radicals
2. Lipophilicity
3. Nonvolatility in steam
4. Heat stability up to 174 degrees C.

Consequently, several compounds have been identified as being effective in inhibiting nitrosamine formation in bacon. These are:

1. Ascorbic/erythorbic acids and their sodium salts
2. Ascorbyl palmitate
3. Ascorbic acid acetals
4. Piperazine
5. Proply gallate
6. TBHQ
7. Alpha-tocopherol

In 1980 Hoffman-LaRoche filed a petition with the FDA proposing affirmation that d- and dl-alpha-tocopherol is generally recognized as safe for use in blocking N-nitrosamine formation in bacon. FDA published a Notice of Filing (45 FR 74061; November 7, 1980) inviting interested parties to review and comment on the petition.

The FDA published a final rule affirming d- and dl-alpha-tocopherol as generally recognized as safe (GRAS) for use as inhibitors of nitrosamine formation in pump-cured bacon (49 FR 13346; April 4, 1984). Subsequently, Hoffman-LaRoche, Inc. renewed its request to USDA and Diamond Crystal Salt Company petitioned the USDA to allow the use of d- and dl-alpha-tocopherol in pump-cured bacon. The substance of the individual petitions is as follows:

Hoffman-LaRoche

(a) The d- and dl-alpha-tocopherol would be applied to the surface of the bacon by spraying, brushing or dipping the bacon with or in a solution of d- and dl-alpha-tocopherol in vegetable oil.

(b) The use of d- and dl-alpha-tocopherol would be *mandatory* at a level of 500 ppm.

Diamond Crystal Salt

(a) The d- and dl-alpha-tocopherol would be incorporated into the pump solution by using silicon dioxide and lecithin as dispersing and emulsifying agents.

(b) The use of d- and dl-alhpa-tocopherol would be allowed as an *optional* ingredient at a level of 500 ppm in addition to the use of ascorbate/erythorbate in pump-cured bacon.

Discussion

The Department has required sodium ascorbate or sodium erythorbate to be included in pump-cured bacon at a level of 550 ppm and sodium nitrite at 120 ppm since June 15, 1978. These substances, in combination with reduced nitrite levels, have proven to be effective in reducing nitrosamine formation. The Department has received no information which would indicate that it is necessary to require the mandatory addition of other nitrosamine inhibitors. The evidence, however, does indicate that d- and dl-alpha-tocopherols do aid in the inhibition of nitrosamine formation, particularly in the lipid phase of the bacon. Therefore,

the Administrator finds good reason to permit the addition of d- and dl-alpha-tocopherol as an optional ingredient in addition to the required ascorbate/erythorbate. The bacon processors would therefore have the option of adding an additional nitrosamine inhibitor if they desire.

The Administrator is aware that research has been carried out by the American Meat Institute (AMI) and Hoffman-LaRoche on the efficacy of the surface application of alpha-tocopherols as nitrosamine inhibitors. However, the only data available to the Department is from the 1979 Proceedings of the Meat Industry Research Conference (William J. Mergens and Harold L. Newmark, page 79). This material refers to the spraying of individual slices of bacon with d- and dl-alpha-tocopherol. It is difficult to extrapolate the data from single slices to whole slabs of bacon. The Administrator has determined that additional information is needed to support the efficacy of the surface application of d- and dl-alpha-tocopherol as an inhibitor of nitrosamine formation. Therefore, surface application will be the subject of further rulemaking.

The data submitted to support the claims of efficacy for d-and dl-alpha-tocopherol is available for review at the Standards and Labeling Division at the address given above.

Lecithin: The Department has been petitioned by Diamond Crystal Salt Company and Central Soya, Fort Wayne, Indiana to amend existing regulations to allow the use of lecithin as an emulsifier in various processed meat food products. Lecithin is currently allowed in some meat food products and the petitioners have supplied data supporting their claims that lecithin is effective as an emulsifier in various other meat food products. Under 9 CFR 318.7(c)(4), the chart allows lecithin to be used as an emulsifier in oleomargarine and shortening. The Administrator has determined that the use of lecithin in those products, where it is shown to be efficacious, will not affect the wholesomeness of the product or render it adulterated.

In the **Federal Register** of July 19, 1983 (48 FR 32749), the Administrator published a final rule announcing new procedures for the approval of substances to be used in the preparation of processed meat food and poultry products. Under that rule and upon a showing that a substance has been listed as GRAS by the Food and Drug Administration, or as a food additive or color additive appropriate for the proposed use in processed meat and poultry products, that use of the substance will be permitted upon a further determination by the Administrator that the proposed use is compatible with FDA requirements and is both suitable and functional for that particular product and is used at the lowest level necessary to accomplish the technical effect.

The substances for which approval has been requested are listed as GRAS by the FDA or are food additives for which the FDA has determined that the requested use is appropriate for the intended product. Both d- and dl-alpha-tocopherol were affirmed as GRAS (49 FR 13346; April 4, 1984) and are listed in 21 CFR 184.1890. Lecithin is affirmed as GRAS and is listed in 21 CFR 184.1400.

Based upon available data, the Administrator finds that the use of these substances as described in meat food products will not result in a product which is unwholesome, adulterated or misbranded, provided that these substances are added only in the amounts permitted or in the case of lecithin in the amounts sufficient to accomplish the stated technical effect and are indicated on the label, in accordance with 9 CFR 317.2(f)(1).

Therefore, the Administrator is amending the Federal meat inspection regulations to include these substances in the chart of approved substances in Part 318.7(c)(4) (9 CFR 318.7(c)(4)). In addition, reference to footnote number 2 (pre-existing in Part 318.7(c)(4) currently at the end of the chart) will be included in the chart informing interested persons where to write for information as to the specific products for which use of these substances is approved.

List of Subjects in 9 CFR Part 318

Food additives, Food labeling, Meat, Meat products, Preparation of products.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 (9 CFR 318) continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 21 U.S.C. 601 *et seq.*; unless otherwise stated.

2. In § 318.7(c)(4) (9 CFR 318.7(c)(4), the entry for the substance *lecithin* under the class of substances "emulsifying agents," under the "products column," shall be changed to read "oleomargarine, shortening, various meat food products," and the entry under the "amount" column shall be changed to read "0.5 percent in oleomargarine; use in other products—sufficient amount for emulsification.[2]"

3. In § 318.7(c)(4) (9 CFR 318.7(c)(4), the following entries shall be added to the "Miscellaneous" class of substances:

Substance	Purpose	Products	Amount
*	* *	*	*
d- and dl-alpha-tocopherol.	To inhibit nitrosamine formation.	Pump-cured Bacon.	500 ppm.
*	* *	*	*

Done at Washington, D.C. on: June 6, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-16066 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-80-AD; Amdt. 39-5087]

Airworthiness Directives; Canadair Model CL-600-1A11 (CL-600) and CL-600-2A12 (CL-601) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires removing paint from the lower wing center section if the surface is not properly finished. This surface must be finished using aluminum loaded paint or left unpainted. This action is necessary to provide adequate lightning protection for the lower wing center section surface.

EFFECTIVE DATE: August 12, 1985.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to Canadair Limited, 1800 Laurentien Blvd., Saint-Laurent, Quebec H4R 1K2, Canada, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require the removal of improper paint from the lower wing surface of certain Model CL-

600 and CL-601 airplanes and repainting, if desired, with paint as specified in Canadair Alert Service Bulletins A600-0416 (CL-600 airplanes) or A601-0069 (CL-601 airplanes), was published in the Federal Register on March 12, 1985 (50 FR 9808).

Interested parties have been afforded an opportunity to participate in the making of this amendment. The manufacturer, who submitted the only comment received, stated that the painting instructions in the proposed rule implied that the wing gravity filler caps should be painted with aluminum loaded paint even though the service bulletins specified polyurethane or epoxy enamels. The commenter also noted that the effectivity of CL-601 airplanes includes those with serial numbers 3001 through 3030. The FAA acknowledges these comments and has made editorial changes to reflect them in the final rule.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the editorial changes previously noted.

It is estimated that 50 airplanes will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Materials are estimated at $600 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $110,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model CL-600 or CL-601 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Canadair: Applies to all Canadair Model CL-600-1A11 (CL-600) and CL-600-2A12 (CL-601) airplanes as specified in Canadair alert service bulletins A600-0416 dated July 30, 1984, or A601-0069 dated July 30, 1984, certificated in any category. Compliance is required as indicated unless already accomplished. To provide adequate lightning protection for the wing center section lower skin and the wing gravity filler caps, accomplish the following:

A. Within 30 days after the effective date for this AD, unless the center wing fuel tank lower skin surface and the gravity filler fuel caps are unpainted or have been painted in accordance with Canadair Alert Service Bulletin A600-0416 dated July 30, 1984 (for CL-600 airplanes), or A601-0069 dated July 30, 1984 (for CL-601 airplanes), install a placard, which may be locally manufactured, on the left hand main instrument panel using letters of ⅛-inch minimum height, which reads as follows: "NOT APPROVED FOR FLIGHT INTO AREAS WHERE LIGHTNING CONDITIONS ARE KNOWN TO EXIST."

B. Within the next six calendar months after the effective date of this AD, ensure that the center wing fuel tank lower skin surface and the wing gravity filler fuel caps are either unpainted or painted in accordance with the above service bulletins, as applicable.

C. Upon completion of paragraph B., remove placard installed in accordance with paragraph A.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 12, 1985.

Issued in Seattle, Washington, on June 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-15981 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-04-AD; Amdt. 39-5088]

Airworthiness Directives; Short Brothers Ltd. Model SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3-30 series airplanes which requires the installation of a new torsion spring on the flight crew seat harness inertia reel assemblies. Cases of spring failures have occurred which caused failure of the rewind function. This function is necessary to ensure that the crew member is properly restrained by the harness.

EFFECTIVE DATE: August 12, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which would require the installation of a new torsion spring on the flight crew seat harness inertia reel assemblies on certain Short Brothers Ltd. Model SD3-30 airplanes was published in the Federal Register on April 8, 1985 (50 FR 13814).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $80 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $6600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model SD3-30 airplanes are operated by

small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Short Brothers Ltd: Applies to Model SD3-30 airplanes as listed in Short Brothers Service Bulletin SD3-25-37, dated June 1984, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished. To assure proper operation of the crew seat harness, accomplish the following:

A. Install the improved crew seat harness torsion spring assembly in accordance with Short Brothers Ltd. Service Bulletin SD3-25-37, dated June 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 12, 1985.

Issued in Seattle, Washington, on June 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-15982 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 19

[Docket No. 50689-5089]

Metric Conversion Policy for Federal Agencies

AGENCY: Office of the Secretary, Assistant Secretary for Productivity, Technology and Innovation, Commerce.

ACTION: Final rule.

SUMMARY: The Assistant Secretary for Productivity, Technology and Innovation of the Department of Commerce has decided to include in the *Code of Federal Regulations* current Federal agency policy for the facilitation of voluntary transition to use of the metric system of measurement by agencies, industry and the public. Inclusion of this material in the Code will make it easier for agencies and the public to find information and references about Federal agency policy and resources concerning use of the metric system. This rule revises 15 CFR Part 19 headings and authority and adds a new Subpart B for this metric policy statement.

While this policy statement is issued in final form, without a formal comment period, public comments are welcome on a continuing basis.

The policy set out below was stated in a prior notice: "Metric Conversion Policy for Federal Agencies," 46 FR 24455, April 30, 1981. The statement of policy has been taken directly from the prior notice. It has been revised solely to bring the references and text up to date and to eliminate redundancy. No change of policy is intended, and no new program initiatives are announced.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: G.T. Underwood, Director, Office of Metric Programs, Room 4082, U.S. Department of Commerce, Washington, D.C., 20230; Phone (212) 377-0944.

SUPPLEMENTARY INFORMATION:

Background

When the Act of July 28, 1866 (14 Stat. 339; 15 U.S.C. 204-5) was adopted, the use of the metric system was legally recognized for the United States. On May 28, 1878, the United States ratified the Treaty of the Meter (20 Stat. 709), which provided for an International Bureau for Weights and Measures, an International Committee for Weights and Measures, and a General Conference on Weights and Measures. The International System (SI) has become internationally accepted for weights and measures, and has come into increasing use in the United States. On December 23, 1975, the President signed the Metric Conversion Act of 1975 (Pub. L. 94-168; 15 U.S.C. 205a), which declared that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States.

The Act also established an independent body called the United States Metric Board and authorized the use of such committees and advisory panels as needed to implement the Act. The principal committee for policy coordination for the Federal Government is the Interagency Committee on Metric Policy (ICMP). Each agency also designates a "metric coordinator" to serve as a member of the Metrication Operating Committee (MOC), which reports to the ICMP.

On October 1, 1982, the responsibility for implementing the policies of the Metric Conversion Act was assigned to the Secretary of Commerce because the Metric Board had ceased to function for lack of funding. The Secretary's responsibility is delegated to the Assistant Secretary for Productivity, Technology and Innovation.

On January 8, 1980, the Interagency Committee on Metric Policy (ICMP) announced a "Metric Conversion Policy for Federal Agencies" (45 FR 1840) which provided guidance for coordination and compatibility of Federal actions with those of the private sector. Following receipt of comments, the policy as revised was published on April 30, 1981 (46 FR 24455).

Rulemaking Requirements

Under 5 U.S.C. 553(b)(A), this general statement of policy is not subject to the notice and opportunity for comment requirements of the Administrative Procedure Act. Furthermore, pursuant to 5 U.S.C. 553(d)(2), this general statement of policy is not subject to the delayed effective date requirement of the act and will be effective immediately upon publication in the **Federal Register**.

Under Executive Order 12291 the Department must judge whether a regulation is major within the meaning of section 1 of the Order and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. This policy statement is not a major rule because it is not likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore a Regulatory Impact Analysis will not be prepared.

This action is exempt from the analysis requirements of the Regulatory Flexibility Act because notice and opportunity for comment are not required for this action by section 553 of the Administrative Procedure Act or any other law. Therefore, no initial or final

regulatory flexibility analysis will be prepared.

This policy statement does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 19

Science and technology, Metric system.

1. For the reasons set out in the preamble, the table of contents of Part 19 is amended by revising the heading for Part 19; by designating §§ 19.1 through 19.7 as Subpart A and adding a heading for Subpart A; by adding a new Subpart B; and by revising the authority citation. As amended, the table of contents for Part 19 reads as follows:

PART 19—PRODUCTIVITY, TECHNOLOGY AND INNOVATION

Subpart A—Promotion of Private Sector Industrial Technology Partnerships

Subpart B—Metric Conversion Policy for Federal Agencies

Authority: 15 U.S.C. 1512 and 3710, 15 U.S.C. 205a, and DOO 10–1.

2. Part 19 is amended by designating §§ 19.1 through 19.7 as Subpart A, adding a heading for Subpart A, and by adding a new Subpart B to read as follows:

Subpart A—Promotion of Private Sector Industrial Technology Partnerships

* * * * *

Subpart B—Metric Conversion Policy for Federal Agenices

§ 19.20 Purpose.

This provides policy and guidelines for coordination for Federal agencies to deal with increasing use of the metric system within the Federal Government, consistent with voluntary conversion in State and local governments and in the private sector.

§ 19.21 Definition.

The term "metric system", as used in this Part 19, means the International System of Units established by the General Conference on Weights and Measures in 1960, as interpreted or modified from time to time for the United States by the Secretary of Commerce under authority of the Metric Conversion Act of 1975 and the Metric Education Act of 1978. (The last revision as of the date of this publication may be found in National Bureau of Standards publication NBS LC 1132, April 19, 1982, which may be obtained from the Technical Information and Publications Division, National Bureau of Standards, Gaithersburg, Maryland 20899.)

§ 19.22 General policy.

(a) Federal agencies shall coordinate and plan for the increasing use of the Metric System in the United States consistent with the objectives of the Metric Conversion Act and metric conversion trends in the Nation. Federal agencies shall encourage and support an environment which can accommodate metrication, and when taking initiatives, will act with consideration for metrication in State and local governments and in the private sector.

(b) Each federal agency shall be responsible for developing plans, establishing the necessary structure, and allocating sufficient resources to carry out this policy following the guidelines set out below.

§ 19.23 Guidelines.

(a) Coordinate and plan for metric conversion, taking into account the interests, views and conversion plans of other Federal agencies, State and local governments, and the private sector;

(b) Identify areas where metrication is dependent upon the agency's initiative, and take action that reflects the needs of the United States and that does not unduly restrict competition;

(c) Identify areas where metrication is dependent upon initiatives outside the agency that affect the agency, and take appropriate internal action;

(d) Assist in resolving metric-related problems brought to the attention of the agency that are associated with agency actions, programs and responsibilities.

(e) Identify measurement-sensitive agency policies and procedures and ensure that regulations, standards, specifications, procurement policies and appropriate legislative proposals do not impose barriers to voluntary use of the metric system;

(f) Consider the cost effects of metric use in agency policies, programs and actions;

(g) Provide for full public involvement and timely information about significant metrication policies, programs and actions;

(h) Consider, in procurement, acceptance without prejudice of metric goods and services when they are offered at competitive cost and meet the needs of the Government; and

(i) Consider particularly the effects of agency metric policies and practices on small business.

§ 19.24 Recommendations for agency organization.

Each agency should:

(a) Participate as appropriate in the Interagency Committee on Metric Policy (ICMP), which coordinates and provides policy guidance regarding the U.S. Government's efforts in accommodating voluntary metric conversion.

(b) Designate a senior official to be responsible for intra-agency metric policy and to represent the agency on the ICMP.

(c) Designate such official as may be appropriate to represent the agency in the Metrication Operating Committee (MOC), a committee subordinate to the ICMP.

(d) Maintain liaison with private sector groups involved in planning for or coordinating voluntary use of the metric system.

(e) Provide for adequate employee awareness and understanding of agency metric policies and programs.

§§ 19.25–19.199 [Reserved]

Dated: June 28, 1985.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 85–15939 Filed 7–3–85; 8:45 am]

BILLING CODE 3510–18–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3156]

Craftmatic/Contour Organization, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires two Bensalem, Pa. sellers of electric adjustable beds and their individual owner, among other things, to cease denying responsibility of their

written warranties; failing to fully and promptly honor valid warranty claims; and failing to disclose relevant information concerning any other guarantor. The firms are required to clearly and prominently disclose in advertisements and promotional materials offering any product warranty, either the nature and extent of all material limitations and exclusions of the warranty (including any requirement that consumers seeking to obtain warranty performance are obliged to arrange for shipping and/or pay shipping charges) or a statement advising that the warranty contains major limitations and exclusions and should be consulted by the prospective buyer prior to purchase. The order also bars the companies from disseminating to their door-to-door sellers written promotional materials that do not contain copies of all written warranties offered and disclose to prospective buyers that the sales representative has copies of such warranties available for the consumer's inspection. The companies are further required to comply fully with the Pre-Sale Availability Rule; maintain specified records concerning warranty performance for a period of four years; and provide their current distributors and retailers with a copy of the order and the attached notice.

DATE: Complaint and Order issued June 13, 1985.[1]

FOR FURTHER INFORMATION CONTACT: FTC/H-236, Rachel Miller, Washington, D.C. 20580. (202) 523-1670.

SUPPLEMENTARY INFORMATION: On Tuesday, January 15, 1985, there was published in the **Federal Register**, 50 FR 2065, a proposed consent agreement with analysis In the Matter of Craftmatic/Contour Organization, Inc., Craftmatic Comfort Mfg. Corp., corporations, and Stanley Kraftsow, individually and as an officer and director of said corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10-1 Availability of merchandise and/or services; § 13.160 Promotional sales plans; § 13.205 Scientific or other relevant facts; § 13.287 Warranties; § 13.287-5 Limitations or exclusions. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-37 Formal regulatory and/or statutory requirements; § 13.533-45 Maintain records; § 13.533-75 Warranties. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1647 Guarantees; § 13.1740 Scientific or other relevant facts; § 13.1777 Warranties.—Services: § 13.1835 Cost; § 13.1843 Terms and conditions. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and/or statutory requirements.

List of Subjects in 16 CFR Part 13

Electric adjustable beds, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

Emily H. Rock,

Secretary.

[FR Doc. 85-16010 Filed 7-3-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-06]

Regatta; Barnegat Bay Air Brook Classic, Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the annual Barnegat Bay Air Brook Classic. This powerboat race is being sponsored by the Barnegat Bay Power Boat Racing Association of Bricktown, NJ. This regulation is needed to provide for the safety of participants and spectators on navigable waters during the event.

EFFECTIVE DATE: This regulation becomes effective on August 17, 1985.

FOR FURTHER INFORMATION CONTACT: LT D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 25, 1985, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 16313). Interested persons were requested to submit comments, and one comment was received.

Drafting Information

The drafters of this notice are LT D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual Barnegat Bay Air Brook Classic is a powerboat race sponsored by the Barnegat Bay Power Boat Racing Association of Bricktown, NJ. This event is traditionally held each year on the fourth Saturday in August. Because of the annual nature of this event, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations.

Thereafter the Coast Guard will provide the public with full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. This event is well known to the residents of the communities surrounding Tom's River and Barnegat Bay. There will be one (1) 80 mile race sanctioned by the National Power Boat Association. Between 45-60 powerboats will compete during the day reaching speeds of 65-80 mph. The oval track has been laid out so that there should be little or no interference with vessel traffic in the Intercoastal Waterway (I.C.W.). Access to and from any section of Tom's River and Barnegat Bay will not be restricted. The sponsor is providing in excess of 40 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for what is expected to be a large spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectators, and should adhere closely to the charted I.C.W. The Coast Guard will issue a safety voice broadcast to advise the general public of this event.

Discussion of Comments

One comment was received from the sponsor of another event which is scheduled for the same date as this powerboat race. This person thought that the sponsor of the Air Brook Classic

was being given a permanent permit to hold this event. The promulgation of this regulation as a permanent part of the Code of Federal Regulations does not relieve the event sponsor of the requirement to apply for a permit to hold this event each year. The Coast Guard will issue or deny the permit based on the sponsor's annual application and ability to run a safe event. The boating public will be informed of any changes in dates or cancellation of the event by publication in the **Federal Register** and by an announcement in the Third District Local Notice to Mariners. The comment also pointed out a potential conflict between the two events. The locations of both events are separated by a distance of approximately one half mile. The Coast Guard will issue a safety voice broadcast to advise mariners of both events so that neither event will be affected by transiting vessels passing through the area to view either of the events. The sponsor of the Air Brook Classic has agreed to assemble his vessels a little further to the south so as to ensure a good separation of these two events. At the request of the sponsor, August 18, 1985 has been approved as a rain date, should the event be postponed due to inclement weather on August 17, 1985.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.302 to read as follows:

§ 100.302 Barnegat Bay Air Brook Classic, Toms River, NJ.

(a) *Regulated Area.* Barnegat Bay, New Jersey in the area bounded by 39 degrees 55 minutes north latitude on the north, 39 degrees 50 minutes north latitude on the south, the Intercoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* This regulation will be effective from 10:00 a.m. to 3:00 p.m. on August 17, 1985, and thereafter annually on the fourth Saturday in August unless otherwise specified in the Third District Local Notice to Mariners and in a **Federal Register** notice. In case of postponement due to weather, the approved rain date is the following day and this regulation is effective for the same time period.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(3) The sponsor shall anchor race committee boats on each turn. Checkpoints shall be positioned so that race participants will pass no closer than 200 feet from the I.C.W. A line of committee boats shall be positioned to separate the race course from the I.C.W.

(4) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with mariners transiting the I.C.W. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Between the race course and the I.C.W. in the area to the west of the race course.

(ii) Between the race course and Island Beach State Park in the area north of Tices Shoal.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: June 19, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-16022 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD09-83-02]

Special Anchorage Areas; Chicago Harbor, IL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the boundaries of the "Grant Park" special anchorage areas in Chicago Harbor, Illinois. The City of Chicago project to straighten the Lake Shore Drive S-curve required the demolition of the structure which was the reference point for the legal description of the special anchorage areas. The project also required landfill which has covered part of the special anchorage area. This action will describe the location and size of the special anchorage areas as they actually are used at the present time.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, or phone (216) 522-7064.

SUPPLEMENTARY INFORMATION: On 1 April 1985 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 12835). Interested persons were requested to submit comments and 3 comments were received.

Drafting Information

The drafters of this regulation are Ensign George H. Burns III, project officer, Marine Port And Environmental Safety Branch and Lieutenant R.A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

There were three comments received concerning this regulation. All were from federal agencies. Two commenters expressed the concern that the

boundary descriptions in the proposed rule were too complex for practical use. It is agreed that the average boater would have difficulty interpreting the technical description in the proposed rule and plotting it on a chart of the area. However, it will not be necessary to do so. The new area will eventually be shown on new charts. In effect the whole area within the inner breakwalls will be Special Anchorage Area with several designated channels to provide access. Furthermore, boaters wishing to utilize these areas must first be assigned mooring space by the Chicago Park District, which is thoroughly familiar with the bounds of the anchorage.

One commenter stated that the new alignment for the areas should offer increased boater safety and a better flow of vessel traffic within the Grant Park Marina.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The economic impact is minimal because this regulation merely describes the areas as they are presently being used.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Part 110 is amended by revising § 110.83 to read as follows:

§ 110.83 Chicago Harbor, IL.

(a) *Grant Park North-A.* Beginning at a point 2,120 feet South of the intersection of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, and the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said harbor line runs parallel to the overall alignment of said Grant Park bulkhead between its North and South ends, said intersection is approximately 800 feet South of the South face of the former Naval Armory Dock, and 100 feet East of said bulkhead, that point being approximately on the harbor line; thence North along a straight line parallel to said harbor line and bulkhead, 1,705 feet to a point that is 100 feet East of said harbor line and 150 feet East of the Grant Park bulkhead; thence East at a right angle, 150 feet; thence North at a right angle, parallel to the first described line, passing 100 feet East of the Chicago Yacht Club bulkhead, 440 feet; thence Northeasterly 850 feet to a point 1,070 feet East of the aforesaid Grant Park bulkhead; thence Southeasterly 740 feet to a point 1,600 feet East of said harbor line; thence Southerly 1,960 feet to a point approximately 1,555 feet East of said harbor line and about 1,560 feet East of said Grant Park bulkhead; thence Southwesterly 295 feet to a point 1,180 feet due East, in a direction perpendicular to the West line hereof, from the point of beginning; and thence West to the point of beginning.

(b) *Grant Park North-B.* Beginning at a point 145 feet North of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, and 320 feet East of the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said Chicago Yacht Club bulkhead extends due East, perpendicular to the Grant Park bulkhead's overall alignment between its North and South ends, said bulkhead runs parallel to the aforesaid harbor line and is approximately 800 feet South of the South face of the former Naval Armory Dock, said point is 20 feet East of the East face of the Chicago Park District jetty; thence North parallel to said jetty, 230 feet to a point 20 feet South of the South face of the Lake Shore Drive bulkhead, said bulkhead runs Easterly and Westerly in a curved direction; thence Easterly along a line parallel to said curved bulkhead to a point 20 feet Southwest and perpendicular to a line extended along the Southwest side of the Columbia Yacht Club pier to said curved bulkhead; thence Southeasterly parallel to said extended line, 160 feet; thence Southwesterly to the point of beginning.

(c) *Grant Park North-C.* Beginning at a point 970 feet North of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, which extends due East and perpendicular from the harbor line approved by the Department of the Army on August 3, 1940, said Chicago Yacht Club bulkhead line is approximately 800 feet South of the South face of the former Naval Armory Dock, and 1,170 feet East of said harbor line, said point of beginning is 20 feet East of the East face of the Columbia Yacht Club pier and 20 feet South of the South face of a breakwater, which runs in a East and West direction; thence East along a line parallel to the South face of said East-West breakwater, 540 feet to a point 20 feet West of the West face of a breakwater, which runs in a North and South direction; thence South along a line parallel to the West face of said North-South breakwater, approximately 965 feet; thence Northwesterly to a point 20 feet Southeast and perpendicular to the Southeast side of the aforesaid Columbia Yacht Club pier; thence Northerly along a line parallel to the East face of said pier to the point of beginning.

(d) *Grant Park South.* Beginning at a point 2,220 feet South of the intersection of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, and the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said harbor line runs parallel to the overall alignment of the Grant Park bulkhead between its North and South ends, said intersection is approximately 800 feet South of the South face of the former Naval Armory Dock, and 100 feet East of said Grant Park bulkhead, that point being approximately on the harbor line; thence East, perpendicular to the overall alignment of the Grant Park bulkhead, and perpendicular to said harbor line, 1,180 feet; thence Southeasterly 330 feet to a point 1,510 feet East of said Grant Park bulkhead and 225 feet South of an extension of the first described line; thence South perpendicular to the first described line, 220 feet; thence Southwesterly 2,375 feet along a line generally 100 feet Northwesterly from and parallel to the Northwesterly face of the narrow section of the U.S. Inner Breakwater; thence Northwesterly 100 feet to a point 150 feet East of said Grant Park bulkhead (or 100 feet East of the aforesaid harbor line), and 4,570 feet South of the North line of the aforesaid Chicago Yacht Club bulkhead; and thence North 2,350 feet of the point of beginning.

Note.—The Chicago Park District controls the location and type of any moorings placed in the special anchorage areas in this section.

Dated: June 24, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 85–16618 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD3 85-04]

Drawbridge Operation Regulations; Raccoon Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of New Jersey Department of Transportation, the Coast Guard is changing the regulations governing the Route 130 Bridge across Raccoon Creek at Bridgeport, New Jersey by permitting restricted operation of the draw between 7 a.m. and 11 p.m. from November 30 to March 1. This change is being made because of the bridge's close proximity to the railroad bridge .2 miles further upstream and because the bridge logs show relatively few openings from 7 a.m. to 11 p.m. during the months of December, January and February in 1982 through 1984. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on August 19, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: On March 14, 1985, the Coast Guard published proposed rules (50 FR 10251) concerning this amendment. The Commander, Third Coast Guard District, also published the proposal as a Public Notice dated March 25, 1985. In each notice interested persons were given until April 29, 1985 to submit comments.

The Route 130 regulations are being changed to conform with those of the CONRAIL bridge because of the two bridges' close proximity. The CONRAIL drawbridge regulations were recently revised in the **Federal Register** of January 22, 1985 (50 FR 2785). Coast Guard analysis of the Route 130 bridge logs show that between 7 a.m. and 11 p.m. between November 30 and March 1, there were 0 openings in 1982, 4 in 1983, and 2 in 1984. These openings were for commercial vessels which came in and left a couple of hours later. Openings for these vessels will be provided if at least four hours advance notice is given. The existing requirements for four hours notice from 11 p.m. to 7 a.m. year-round remain in effect.

Since the regulations for the two drawbridges are being made identical, the whole section is being revised to simplify and consolidate the regulations. No substantive change is being proposed for the CONRAIL railroad bridge.

Drafting Information

The drafters of this notice are Lucas A. Dlhopolsky, project manager, and Mary Ann Arisman, project attorney.

Discussion of Comments

One comment was received from another Federal agency indicating no objection to the proposed regulations. Accordingly these regulations are adopted as proposed.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The limited commercial activity during the winter months will be accommodated by the four hours advance notice. The bridge logs indicated no recreational vessels requested an opening during the winter months. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.741 is revised to read as follows:

§ 117.741 Raccoon Creek.

The draws of the Route 130 highway bridge, mile 1.8 and the CONRAIL railroad bridge, mile 2.0, both at Bridgeport shall open on signal March 1 through November 30 from 7 a.m. to 11 p.m. At all other times, the draws shall open on signal if at least four hours notice is given. The draws shall open at all times as soon as possible for passage of a public vessel of the United States.

Dated: June 25, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-16020 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-85-05]

Drawbridge Operation Regulations; Back Bay of Biloxi, MS

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Mississippi State Highway Department (MSHD), the Coast Guard is changing the regulation governing the operation of the bascule span bridge over the Back Bay of Biloxi, mile 0.4, on US 90 between Biloxi and Ocean Springs, Harrison and Jackson Counties, Mississippi, to provide that the draw need not open for passage of vessels from 6:30 to 7:05 a.m.; 7:20 to 8:05 a.m.; 4:00 to 4:45 p.m.; and 4:55 to 5:30 p.m., Monday through Friday except holidays. The draw would continue to open on signal outside these rush hour periods. The bridge presently is required to open on signal at all times. This change is being made because frequent openings of the drawspan during these rush hours result in backup of overland traffic along US 90, a major roadway in the area. This action will accommodate the needs of vehicular traffic during peak morning and afternoon traffic periods and will still provide for the reasonable needs of navigation. Additionally, this document corrects the wording of the regulation governing the drawbridge of S15, Back Bay of Biloxi, mile 3.0, to show that the bridge actually is located on Interstate Highway 110.

EFFECTIVE DATE: This regulation becomes effective on August 5, 1985.

SUPPLEMENTARY INFORMATION: On April 11, 1985, the Coast Guard published a proposed rule (50 FR 14258) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated April 23, 1985. In each notice interested persons were given until May 28, 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments

In response to the public notice, 23 letters were received. Two letters

offered no objections. Twenty-one letters favored the proposed operating schedule. Of the 21 letters, two also commented on other aspects of the proposed regulation. One asked if the closure hours could be extended. There is a significant drop in traffic count after the proposed closure times which does not justify an extension of the closure period. The second letter requested consideration of closure regulations for waterway traffic at the Popps Ferry and I-110 bridges, located at mile 8.0 and 3.0. Data provided by MSHD show that the Popps Ferry bridge, which opens on signal at all times, averages only eight openings per day, while the I-110 bridge, with its 60-foot vertical clearance in the closed position, averages one opening every five or six days. The number of openings at these two bridges is not considered significant to warrant closure periods.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this change is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels will be affected by the proposed bridge closure periods, as evidenced by the bridge opening statistics which show that the bridge averages only 1.6 openings during each rush hour period. Moreover, a 10 to 15-minute break during each rush hour period would allow for an opening of the draw to pass all waiting vessels, and will ensure that the average delay to vessels will not exceed 23 minutes. The vessels that transit the bridge are mainly repeat users and scheduling their passage outside of the rush hours, when the draw opens on signal, should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard is changing Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Section 117.675 is amended to read as follows:

§ 117.675 Back Bay of Biloxi.

(a) The draw of the US 90 bridge, mile 0.4, between Biloxi and Ocean Springs shall open on signal; except that, from 6:30 a.m. to 7:05 a.m., 7:20 a.m. to 8:05 a.m., 4:00 p.m. to 4:45 p.m., and 4:55 p.m. to 5:30 p.m, Monday through Friday except holidays, the draw need not open for the passage of vessels.

(b) The draw of the I-110 bridge, mile 3.0 at Biloxi, shall open on signal if at least six hours notice is given.

Dated: June 24, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-16024 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD11-85-01]

Regulated Navigation Area; Isthmus Cove, Santa Catalina Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is designating a regulated navigation area in Isthmus Cove, Santa Catalina Island, California. This action is being taken to protect divers participating in underwater scientific research and underwater scientific research equipment from possible injury or damage resulting from indiscriminate anchoring activities.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) James E. Mahoney, Marine Safety Division, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone Number: (213) 590-2301.

SUPPLEMENTARY INFORMATION: On February 25, 1985 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (50 FR 7613). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) J.E. Mahoney, project officer, and Lieutenant C.M. McNally, project attorney, Eleventh Coast Guard District Legal Office.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The designation of a regulated navigation area will not adversely affect any known commercial enterprise. This measure will protect divers participating in underwater scientific research and underwater scientific research equipment from possible injury or damage resulting from anchoring activities.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Regulated navigation area.

Final Regulations:

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165.1110 to read as follows:

§ 165.1110 Isthmus Cove, Santa Catalina Island, CA.

(a) The following is a Regulated Navigation Area—The waters of Isthmus Cove, enclosed by the shore and a line beginning at latitude 33°26'39" N., longitude 118°29'19" W.; thence northeasterly to latitude 33°26'50" N., longitude 118°29'08" W.; thence east northeasterly to latitude 33°26'57.5" N., longitude 118°28'33.5" W.; thence southeasterly to latitude 33°26'55" N., longitude 118°28'32" W.; thence southwesterly to latitude 33°26'53.5" N., longitude 118°28'35" W.

(b) No vessel may anchor in this area.

(c) For the purposes of this section, "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(33 U.S.C. 1225, 1231; 49 CFR 1.46(n)(4))

Dated: July 1, 1985.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85-16021 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Cost-of-Living Adjustment; Pension and Parents' DIC

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments; correction.

SUMMARY: This document corrects an error in the income limit for a veteran with one or more dependents in need of aid and attendance which was published in the Federal Register of June 19, 1985, on pages 25415–25417.

EFFECTIVE DATE: December 1, 1984.

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Paperwork Management and Regulations Service, (202) 389–2340.

§ 3.216 [Amended]

Accordingly, FR Doc. 85–14700, published at 50 FR 25415 is hereby corrected by changing the figure in § 3.26(a)(4) from $8,231 to $9,231.

Dated: June 28, 1985.

Nancy McCoy,

Chief, Directives Management Division.

[FR Doc. 85–16017 Filed 7–3–85; 8:45 am]

BILLING CODE 8320-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Conservation Grants to Museums

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final guidelines and standards.

SUMMARY: The Institute of Museum Services issues final guidelines and standards relating to a program of Federal financial assistance for conservation projects in museums. The guidelines and standards implement the Museum Services Act. They state eligibility conditions and other terms for the administration of the museum conservation program.

EFFECTIVE DATE: These guidelines and standards are effective on July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Kristine Ramaekers, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506. (202–786–0539).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended on December 4, 1980 and May 31, 1984.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The fiscal year 1985 appropriation for IMS, contained in Pub. L. 98–473 (Oct. 12, 1984), makes available $3,430,000 for museum conservation.

During fiscal year 1984 IMS operated a program of assistance for conservation projects pursuant to the Department of Interior and Related Agencies Appropriations Act, 1984, Pub. L. 98–146. IMS issued guidelines and standards for the operation of this program during fiscal year 1984 only. 49 FR 3860 (Jan. 31, 1984). It is therefore necessary to establish guidelines and standards for the further conduct of the program to facilitate proper and efficient administration of the appropriated funds. Proposed guidelines and standards were published on January 30, 1985. 50 FR 4237. No comments were received by the deadline date for receipt of comments. After review by the National Museum Services Board, these guidelines and standards are published in final form as set forth below.

The guidelines and standards are included as part of the IMS regulations (which are codified in 45 CFR Part 1180). Further information regarding the program is contained in the agency's application package.

2. Highlights of the Program

The IMS conservation program was established through a line item in the fiscal year 1984 appropriation. The House Committee report contained language regarding the structure of the program. H.R. Rept. No. 98–253, 98th Cong. 1st Sess. 113 (1983).

In recommending the appropriation for fiscal year 1985, the House Committee report stated:

> The amount recommended by the Committee continues the initiative for conservation grants. . . . This will provide a maximum of $25,000 to be matched equally in addition to any general operating support an institution may receive. This will allow . . . institutions to provide for conservation programs either by hiring new staff or through contracting. The Committee expects the Board to continue the 1984 program guidelines with employment of a special panel to review this grant program. (H.R. Rept. No. 98–886, 98th Cong. 2d Sess. 121 (1984)).

The development of the guidelines and standards in this document has been carried out in light of this language.

In summary, the program provides grants to museums of up $25,000 for conservation projects on a matching basis. Therefore, a museum must supply at least 50 percent of the project costs from non-federal sources. Grants are made only to museums. The project period may not exceed two years.

3. Paragraph by Paragraph Analysis

A paragraph by paragraph analysis was published in the preamble to the proposed guidelines and standards, 50 FR 4238, and is not repeated here. With the exception of one clarifying revision to paragraph (d) of the guidelines and standards, no changes have been made in the text of § 1180.20 as published in proposed form.

4. Executive Order 12291

These guidelines and standards have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

5. Regulatory Flexibility Act Certification

The Director certifies that these guidelines and standards will not have a significant economic impact on a substantial number of small entities.

To the extent that they affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These guidelines and standards will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision. They impose minimal requirements to ensure the proper expenditure of grant funds.

List of Subjects in 45 CFR Part 1180

Museums, National boards.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: July 1, 1985.

Susan Phillips,

Director, Institute of Museum Services.

Dated: June 26, 1985.

Peter H. Raven,

Chairman, National Museum Services Board.

The Institute of Museum Services amends Subchapter E of Chapter XI of Title 45 of the Code of Federal Regulations as follows:

PART 1180—GRANTS REGULATIONS

1. The authority citation for 45 CFR Part 1180 continues to read as follows:

Authority: Museum Services Act (20 U.S.C. 961–68), as amended, and Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994, unless otherwise noted.

2. The heading for Subpart A and section 1180.20 is revised as set forth below.

Subpart A—General Operating Support; Conservation Grants

§ 1180.20 Guidelines and standards for conservation projects.

(a) *Scope.* The guidelines and standards in this document apply to all aspects of the IMS conservation grant program including the submission of applications by museums for conservation grants, to the award, review and approval of such applications by IMS, and to the carrying out of conservation grants awarded by IMS.

(b) *Applicability of regulations.* (1) Except as otherwise provided in these guidelines, Subparts A–C of this part, Part 1180 of Title 45 CFR, (45 CFR 1180.1–1180.58) (IMS Grants Regulations), as amended, including §§ 1180.35, 1180.41, 1180.45, 1180.48, and 1180.49, apply to the IMS conservation grant program.

(2) Sections 1180.11(d) does not apply. A museum which applies for a conservation grant need not submit a long-range plan.

(3) Section 1180.16(b), which provides that IMS normally does not make grants for more than 10 percent of a museum's operating budget, does not apply to conservation grants.

(4) Section 1180.18 (relating to maintenance of effort) does not apply.

(5) In addition to submitting the final report required by § 1180.17, a grantee must submit an interim report in accordance with a schedule set forth in the grant award document. An applicant that has received a prior conservation grant from IMS the performance of which has not been completed may be required to submit an additional performance report or submit an interim report early.

(c) *Definition.* As used in these guidelines, the term "conservation" includes, but is not limited to, the following functions, as applied to art, history, natural history, science and technology, and living collections:

(1) Technical examination of materials and surveys of environmental and collection conditions;

(2) Provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, reformating, nurturing and transportation of objects;

(3) Physical treatment of objects, specimens and organisms, for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and physical compensation for losses; species survival activities; and

(4) Research and training in conservation.

(d) *Applicants.* Under the Museum Services Act only a museum may receive a grant. (20 U.S.C. 965(a)). See § 1180.3 of the IMS regulations for the definition of "museum". A museum may apply for and receive only one conservation grant under this program in a fiscal year.

(e) *Types of conservation projects funded.* IMS considers applications to carry out conservation projects such as:

(1) Projects to conduct or obtain training in conservation (including training of persons for careers as professional conservators; training or upgrading of practicing conservators and conservation technicians in the use of new materials and techniques; and training of persons to become conservation technicians).

(2) Projects to conduct research in conservation (including developmental and basic research).

(3) Projects to develop improved or less costly methods of conservation or both.

(4) Projects related to museum conservation needs not regularly addressed by other Federal funding agencies.

(5) Projects to meet the conservation needs of museums which are unable to maintain their own individual conservation facilities, such as the use of regional conservation centers or mobile conservation facilities. Because grants are made only to museums, organizations which operate regional conservation centers but which are not museums are ineligible for a direct grant. However, a museum or a group of museums may use a grant to obtain services from a center.

(6) Projects to conserve particular objects in a museum's collection (including plants and animals) or to meet the conservation needs of a particular museum (through such activities as the employment of conservators and the procurement of conservation services or equipment).

(f) *Limits on Federal funding.* See also paragraph (1) (allowable costs) (1) IMS makes a conservation grant which obligates no more than $25,000 in Federal funds. A conservation grant is not included in the maximum amount which a museum may expect to receive from IMS for a fiscal year, as set forth pursuant to § 1180.9 of the regulations. Therefore, a museum may receive, for example, a General Operating Support grant for the amount specified pursuant to that section and an additional $25,000 for a conservation grant in a fiscal year. A museum may not receive more than $25,000 for a conservation grant.

(2) IMS makes conservation grants only on a matching basis. This means that at least 50% of the costs of a conservation project must be met from non-federal funds. Principles in applicable OMB circulars regarding cost sharing or matching apply. See, e.g. OMB Circular A–102, Attachment F.

(g) *Application requirements.* Application requirements in § 1180.11(a), (b), and (c) apply. An application shall describe when, during the term of the grant, the applicant plans to complete each objective or phase of the project. Where appropriate, IMS may require an applicant to submit a dissemination plan.

(h) *Procedures for review of applications.* (1) IMS uses the procedures stated in this paragraph to review applications for conservation projects.

(2) IMS evaluates all eligible applications for conservation projects in accordance with applicable criteria. (See paragraph (i) below.) The Director expects to use panels of experts to review at least a portion of the applications for conservation grants. Depending upon the number of applications received as well as other factors, the Director may also use field reviewers to evaluate applications before submission of applications to the panels. In addition, the Director may use technical experts to provide technical advice regarding certain applications. See generally § 1180.12 of the IMS regulations.

(3) IMS evaluates applications for conservation projects separately from applications for general operating support.

(i) *Criteria.* This paragraph sets forth the criteria which IMS uses in evaluating and reviewing applications for conservation grants. Panelists and field reviewers are instructed to use only these criteria in the evaluation and review of these applications.

(1) The following programmatic criteria apply to the evaluation and review of conservation grants:

(i) What is the importance of the object or objects to be conserved? What is the significance of the object or objects to the museum's collection and/or audience?

(ii) What is the need for the project, including the relationship of the project to the conservation needs and priorities of the applicant museum as reflected in a survey of conservation needs or similar needs assessment?

(iii) What are the applicant's plans to use and maintain the anticipated results or benefits of the project after the expiration of Federal support?

(iv) Does the applicant plan to devote adequate financial and other resources to the project without inhibiting its ongoing activities?

(2) The following technical criteria apply to the evaluation and review of applications for conservation grants:

(i) What is the nature of the proposed project with respect to project design and management plan?

(ii) To what extent does the application exhibit knowledge of the technical area to which the conservation project relates and employ the most promising or appropriate methods or techniques of conservation? To what extent is the conservation project likely to use, develop or demonstrate improved, more efficient, or more economic methods of conservation?

(iii) Does the project have an adequate budget to achieve its purpose? Is the budget reasonable and adequate in relation to the objectives of the project?

(iv) What are the qualifications of the personnel the applicant plans to use on the project and the proposed time that each such person is obligated to commit to the project?

(j) *Duration of grant.* IMS makes a conservation grant under this section for a period of not to exceed two years.

(k) *Grant condition.* An applicant which has received a grant in a prior fiscal year under the IMS conservation grant program may not receive a grant in a subsequent fiscal year under this section until required reports have been submitted regarding the performance of the previous grant.

(l) *Allowable and unallowable costs.* (1) Section 1180.10 of the IMS regulations, which applies to conservation grants, sets forth the rules applicable to determining the allowability of costs under IMS grants and refers readers to the OMB circulars containing applicable cost principles which govern Federal grants generally.

(2) In general such costs as compensation for personal services, costs of materials and supplies, rental costs, and other administrative costs specifically related to a conservation project are allowable under a conservation grant in accordance with applicable cost principles.

(3) Costs of alterations, repairs and restoration to an existing facility are allowable when they are related to a conservation project under a conservation grant in accordance with applicable cost principles.

(4) Costs of equipment are generally allowable if related to a conservation project but do require the specific approval of the Director as indicated in the grant award document.

(5) A grantee may award a stipend to an individual for training in connection with a conservation project. Stipends and allowances may be paid at rates and under conditions established by the Director consistent with policies of other agencies in the Foundation or other agencies or instrumentalities of the United States providing comparable assistance with respect to conservation.

(6) Costs of new construction are unallowable. For example, a museum may not a use a conservation grant to construct a new building or an addition to an existing building to improve the environment in which its collections are housed.

[FR Doc. 85-16004 Filed 7-3-85; 8:45 am]

BILLING CODE 7036-01-M

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45 CFR Part 1180

Institute of Museum Services; Federal Financial Assistance

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rules.

SUMMARY: The Institute of Museum Services issues amendments to regulations relating to certain of its programs of Federal financial assistance. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the General Operating Support and Museum Assessment programs for museums and remove unneeded provisions.

EFFECTIVE DATE: These regulations are effective July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Kristine Ramaekers, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, (202-786-0539).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended on December 4, 1980 and May 31, 1984.

The purpose of the Act is stated in section 202 as follows:

It is the purpose [of the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of non-formal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic and scientific heritage, and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from among the appointed members. Members are broadly representative of various museums, including museums relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational and cultural resources of the United States; and of the general public. In addition to the members appointed by the President, the following serve as members of the Board; the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of the Smithsonian Institution, and the Director of the National Science Foundation. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation), Pub. L. 97-100, December 23, 1981, Pub. L. 97-394, December 30, 1982, Pub. L. 98-306, May 31, 1984.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public and providing education programs to the public.

2. Need for Amendments

IMS regulations for the IMS General Operating Support (GOS) and Special Project Support (SP) programs were published in full on June 17, 1983 (48 FR 27727). Amendments were published for FY 1984 on April 10, 1984, 49 FR 14108 (miscellaneous amendments) and June 15, 1984, 49 FR 24731 (deferral of certain requirements). Regulations for the Museum Assessment Program were published on January 26, 1984 at 49 FR 3182. Further amendments to these regulations are needed in order to implement policy directions of the Board with respect to these programs.

3. Proposed Amendments and Response to Public Comment

A notice proposing revised regulations for the museum services program was published on October 5, 1984, 49 FR 39346. The preamble to the notice of proposed rulemaking contained an amendment by amendment analysis explaining the purpose of each amendment. 49 FR 39347. That discussion is not repeated here. Public comment was invited on the proposed changes. 49 FR 39348. One comment was received, as described below. The Institute has considered that comment and has again reviewed the proposed amendments to determine the necessity and appropriateness of the proposed changes for carrying out the fiscal year 1985 competition for General Operating Support and Museum Assessment. In light of this consideration and review, following consultation with the National Museum Services Board, the Institute has determined that the amendments to the regulations should be adopted as proposed in the October 5, 1984 notice. The final regulations set forth below reflect this determination.

The one comment received regarding the proposed regulations questioned why § 1180.5 (f) and (g) were proposed to be deleted. Section 1180.5(g), as set forth in the June, 1983 regulations, precludes the receipt of IMS funds by applicants which also receive challenge grants from other federal agencies (such as the National Endowment for the Arts or the National Endowment for the Humanities) under certain circumstances. As indicated in the preamble to the proposed rule, Congress included language in the fiscal year 1984 appropriation act to preclude the enforcement of that section on the ground that current levels of funding render it unnecessary. Pub. L. 98–146 (1983). Legislative reports relating to the fiscal year 1985 appropriation indicate continuing concern regarding such administrative restrictions. *See* Pub. L. 98–473 (1984); H.R. Rept No. 98–886, 98th Cong. 2d Sess. 121 (1984); Sen. Rept. No. 98–578, 98th Cong. 2d Sess. 124 (1984). Under these circumstances, the current regulations of the Institute have been amended to delete section 1180.5(g).

With respect to § 1180.5(f), relating to receipt of assistance in more than three out of five years, the Institute believes that the rule is now unnecessary in view of the current level of funding. In addition, the Institute believes that other steps which it has taken effectively deal with the concern addressed by the commenter (increasing the opportunity for participation in IMS funding by small museums or museums which have not previously received an IMS grant). In the most recent competition for General Operating Support, for example, 22 percent of the recipients were institutions which had not previously received awards, although § 1180.5(f) did not apply to that competition. In addition, about 35 percent of the GOS awards made for fiscal year 1984 were made to museums with budgets under $150,000.

Accordingly, in keeping with the proposed regulations, the final regulations set forth below delete the sections in question.

4. Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

5. Regulatory Flexibility Act Certification

The Director certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

To the extent that they affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These amendments will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision. They impose minimal requirements to ensure the proper expenditure of grant funds.

List of Subjects in 45 CFR Part 1180

Grant programs, Museums, National boards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: June 26, 1985.

Susan Phillips,

Director, Institute of Museum Services.

Dated: June 26, 1985.

Peter H. Raven,

Chairman, National Museum Services Board.

The Institute of Museum Services amends Part 1180 of Subchapter E of Chapter XI of Title 45 of the Code of Federal Regulations as set forth below:

SUBCHAPTER E—INSTITUTE OF MUSEUM SERVICES

PART 1180—GRANTS REGULATIONS

1. The authority citation for 45 CFR Part 1180 continues to read as follows:

Authority: Museum Services Act (20 U.S.C. 961–68), as amended, and Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994, unless otherwise noted.

2. Section 1180.3(d) is revised to read as follows:

§ 1180.3 Definition of museum.

* * * * *

(d)(1) Except as set forth in paragraph (d)(2) of this section, an institution exhibits objects to the general public for the purposes of this section if such exhibition is a primary purpose of the institution.

(2) An institution which does not have as a primary purpose the exhibition of objects to the general public but which can demonstrate that it exhibits objects to the general public on a regular basis as a significant, separate, distinct, and continuing portion of its activities, and that it otherwise meets the requirements of this section, may be determined to be a museum under this section. In order to establish its eligibility, such an institution must provide information regarding the following:

(i) The number of staff members devoted to museum functions as described in paragraph (a) of this section.

(ii) The period of time that such museum functions have been carried out by the institution over the course of the institution's history.

(iii) Appropriate financial information for such functions presented separately from the financial information of the institution as a whole.

(iv) The percentage of the institution's total space devoted to such museum functions.

(v) Such other information as the Director requests.

(3) The Director uses the information furnished under paragraph (d)(2) of this section in making a determination

regarding the eligibility of such an institution under this section.

3. Section 1180.5 is revised to read as follows:

§ 1180.5 Eligibility and burden of proof—Who may apply.

(a) A museum located in any of the fifty States of the Union, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, Guam, or the District of Columbia may apply for a grant under the Act.

(b) No museum is eligible to apply for funding available under the Act unless it has provided museum services, including exhibiting objects to the general public on a regular basis, for at least two years prior to application.

(c) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(d) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(e) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

§§ 1180.8, 1180.11(f) and 1180.14 [Removed]

4. Sections 1180.8, 1180.11(f), and 1180.14 (relating to Special Projects) are removed and reserved. The table of contents is revised accordingly.

5. Section 1180.9(a) is revised to read as follows:

§ 1180.9 Likely size of grants and allocation of funds among activities.

(a) It is anticipated that no museum will receive for General Operating Support more than an amount to be specified by notice in the **Federal Register** for each fiscal year.

* * * * *

6. Section 1180.11(c)(4) is revised to read as follows:

§ 1180.11 Basic requirements which a museum must meet to be considered for funding.

* * * * *

(c) * * *

(4) The Director is authorized to defer the audit requirement set forth in paragraph (c)(2) in the case of a museum with non-federal operating income of $50,000 or less, exclusive of the value of non-cash contributions (in the fiscal period preceding the fiscal period for which the deferral is requested) if the Director finds that exceptional circumstances justify a deferral and that the grant of the deferral will not be inequitable to other applicants. A deferral may be granted only upon those conditions and in light of those assurances which the Director deems appropriate in order to ensure that the purposes of this paragraph are achieved. The authority to grant deferrals, unless renewed under this paragraph, expires on September 30, 1985.

7. Section 1180.12 is revised to read as follows and the table of contents is revised accordingly:

§ 1180.12 How applications are judged.

(a) To select grantees and determine the amount of their awards, IMS rates competitive applications under the applicable criteria stated in § 1180.13. Normally, these applications are first evaluated by field reviewers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b) To achieve diversity in the distribution of assistance, the Institute may consider the location, size and discipline of the applicant in addition to the criteria in § 1180.13.

8. Section 1180.16(b) is revised to read as follows:

§ 1180.16 IMS share of the costs of a proposal.

* * * * *

(b) Subject to the amount specified under § 1180.9(a), IMS normally does not make grants for more than: (1) 10 percent of a museum's non-federal operating income for its most recently completed fiscal year for which financial information is available or (2) $5,000, whichever is greater. (See § 1180.11). A different figure may be specified by notice published in the **Federal Register**. Non-federal operating income may be increased by an amount reflecting the reasonable and conservative value of non-cash contributions to the museum in such most recently completed fiscal year.

* * * * *

9. Subpart D of Part 1180 is revised to read as follows and the table of contents is revised accordingly:

Subpart D—Museum Assessment

Sec.

1180.70 Purpose of program.
1180.71 Eligibility.
1180.72 Allowable costs.
1180.73 Form of assistance: Limitation on amount.
1180.74 Conditions of participation.
1180.75 Funding and award procedures.
1180.76 Responsibility of a museum.

Subpart D—Museum Assessment

§ 1180.70 Purpose of program.

The Director of the Institute of Museum Services makes grants under this subpart to assist museums in carrying out institutional assessments. The grants enable museums to obtain technical assistance in order to evaluate their programs and operations by generally accepted professional standards. The Director may make grants for separate categories of assessment activities and establish conditions for receipt of assistance for such separate categories.

§ 1180.71 Eligibility.

(a) A museum as defined in § 1180.3 may apply for assessment assistance under this subpart.

(b) A museum which receives a grant for assessment assistance under this subpart for a fiscal year may not receive another grant for the same category of assessment assistance in the same or a subsequent fiscal year.

§ 1180.72 Allowable costs.

A museum may use a grant under this subpart for expenses of institutional assessment, such as registration fees, surveyor honorariums, travel and other expense of a surveyor, and technical assistance materials.

§ 1180.73 Form of assistance; limitation on amount.

(a) The Director makes payments to a museum under this subpart in advance.

(b) The amount of a grant to a museum under this subpart may not exceed $1,000.

§ 1180.74 Conditions of participation.

The Director considers an application by a museum on a form supplied by IMS for a grant under this subpart for assessment assistance only if:

(a) The museum requests assessment from an appropriate professional organization as defined in this section, and

(b) That organization notifies IMS that the request for the assessment assistance is complete and that the museum is eligible to participate. An appropriate professional organization for purposes of this subpart means: (1) The American Association of Museums or (2) other professional organizations that are determined to be capable of arranging for a program of assessment services for a category of museums and are so designated by notice published in the **Federal Register**.

§ 1180.75 Funding and award procedures.

(a) The Director approves applications meeting the requirements of this subpart on first-come, first-served basis, in the order in which it is determined by IMS that such requirements (including all application requirements) have been met.

(b) There are no selection criteria.

(c) Section 1180.16 (IMS share of the cost of a proposal) does not apply to grants under this subpart.

(d) A museum receiving assistance under this subpart need not submit a financial report or a performance report.

(e)(1) Except as provided in § 1180.71 and paragraph (e)(2) of this section Subparts A, B, and C of Part 1180 of Title 45 CFR do not apply to the Museum Assessment Program.

(2) The following sections do apply to the Museum Assessment Program: Sections 1180.5(a); 1180.5(c); 1180.5(d); 1180.5(e); 1180.15; 1180.44; 1180.47; and 1180.51–1180.57.

§ 1180.76 Responsibility of a museum.

Except in unusual circumstances, a museum which receives a grant under this subpart must take the steps normally expected of it to complete the assessment process for which it has received assistance. Section 1180.13(i) (a criterion for evaluation of general operating support applications) applies to the use of funds under this subpart.

(20 U.S.C. 961–968)

[FR Doc. 85–16005 Filed 7–3–85; 8:45 am]
BILLING CODE 7036–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552, 553 and 570

[APD 2800.12 CHGE 12]

General Services Administration Acquisition Regulation; Competition in Contracting Act

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5 is amended to implement the Competition in Contracting Act of 1984 (CICA), Title VII of Pub. L. 98–369, with respect to the acquisition of leasehold interests in real property. In addition, miscellaneous other changes unrelated to the CICA are included in this final rule. The intended effect is to implement CICA and to provide procedures and guidance to GSA contracting activities.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4754.

SUPPLEMENTARY INFORMATION: On March 7, 1985, the General Services Administration published in the **Federal Register** (50 FR 9293, March 7, 1985) a GSAR Notice No. 5–82f inviting comments from interested parties. No public comments were received. The comments received from various GSA offices have been reviewed, reconciled, and incorporated, when appropriate, into this final rule.

Impact

This is not a major rule as defined in Executive Order 12291. Therefore, preparation of a regulatory impact analysis was not necessary. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The changes made in this final rule will primarily impact GSA contracting officers rather than lessors or prospective lessors. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 552, 553, and 570

Government procurement.

1. The authority citation for 48 CFR Parts 552, 553 and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The Table of Contents for Part 552 is amended by adding entries for Sections 552.270–14 thru 552.270–30 and by revising the entries for Sections 552.270–1 thru 552.270–13 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 552.2—Text of Provisions and Clauses

Sec.

* * * * *

552.270–1 Preparation of Offers.
552.270–2 Explanation to Prospective Offerors.
552.270–3 Late Submissions, Modifications, and Withdrawals of Offers.
552.270–4 Historic Preference.
552.270–5 Lease Award.
552.270–6 Parties to Execute Lease.

Sec.

* * * * *

552.270–7 [Reserved]
552.270–8 [Reserved]
552.270–9 [Reserved]
552.270–10 Definitions.
552.270–11 Subletting the Premises.
552.270–12 Maintenance of Premises.
552.270–13 Damage by Fire or Other Casualty.
552.270–14 Condition Report.
552.270–15 Applicable Codes and Ordinances.
552.270–16 Inspection of Premises.
552.270–17 Failure in Performance.
552.270–18 Lessor's Successors.
552.270–19 Alterations.
552.270–20 Proposals for Adjustment.
552.270–21 Changes.
552.270–22 Liquidated Damages.
552.270–23 Operating Costs.
552.270–24 Tax Adjustment.
552.270–25 Adjustment for Vacant Premises.
552.270–26 If Minimum Not Delivered.
552.270–27 Delivery and Condition.
552.270–28 Time Extensions.
552.270–29 Termination for Default.
552.270–30 Progressive Occupancy.

* * * * *

Authority: 40 U.S.C. 486(c).

552.270–1 thru 552.270–11 [Redesignated as 552.270–10 thru 552.270–20]

3. Sections 552.270–1 thru 552.270–11 are redesignated as Sections 552.270–10 thru 552.270–20.

552.270–12 [Redesignated as Section 552.270–4]

4. Section 552.270–12 is redesignated as Section 552.270–4.

552.270–13 [Redesignated as Section 552.270–3]

5. Section 552.270–13 is redesignated as Section 552.270–3.

6. Section 552.270–1 and 552.270–2 are added to read as follows:

552.270–1 Preparation of Offers.

As prescribed in GSAR 570.701–1, insert the following provision:

Preparation of Offers (June 1985)

(a) Offerors are expected to read all parts of this solicitation.

(b) Offers must be (1) submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and (2) signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(c) Offers will be construed to be in full and complete compliance with this solicitation unless the offer describes any deviation in the offer.

(End of Provision)

552.270-2 Explanation to Prospective Offerors.

As prescribed in GSAR 570.701-2, insert the following provision:

Explanation to Prospective Offerors (June 1985)

Any prospective offeror desiring an explanation or interpretation of the solicitation should request it in writing. Oral explanations or instructions given to a prospective offeror will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offerors or if the lack of it would be prejudicial to any other prospective offeror.

(End of Provision)

7. Section 552.270-3 is amended by revising the section title, the introductory text, the title of the provision, and paragraph (b)(1) of the provision to read as follows:

552.270-3 Late Submissions, Modifications, and Withdrawals of Offers.

As prescribed in GSAR 570.701-3, insert the following provision:

Late Submissions, Modifications, and Withdrawals of Offers (June 1985)

* * * * *

(b) * * *

(1) The date of the mailing of a late offer or modification sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer or modification will be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request that the postal clerk place a hand canceled postmark on both the receipt and the envelope or wrapper.)

* * * * *

8. Section 552.270-4 is amended by revising the introductory text, the title of the provision, and paragraph (a), (a)(1), and (b) of the provision to read as follows:

552.270-4 Historic Preference.

As prescribed in GSAR 570.701-4, insert the following provision:

Historic Preference (June 1985)

(a) Preference will be given to offers of space in buildings on, or formally listed as eligible for inclusion in the National Register of Historic Places and to historically significant buildings in historic districts listed in the National Register. Such preference will be extended to historic buildings and will result in award if:

(1) The offer for space meets the terms and conditions of this solicitation as well as any other offer received. (It is within the discretion of the Contracting Officer to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of the building such as high ceilings, wooden floor, etc.); and

* * * * *

(b) If more than one offer of an historic building is received and they meet the above criteria, an award will then be made to the lowest priced historic property offered.

9. Sections 552.270-5, 552.270-6 are added and sections 552.270-7, 552.270-8, and 552.270-9 are reserved as follows:

552.270-5 Lease Award.

As prescribed in GSAR 570.701-5, insert the following provision:

Lease Award (June 1985)

(a) The Government will award a lease resulting from this solicitation to the responsible offeror, whose offer conforming to the solicitation, will be most advantageous to the Government, price and other factors specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers, (2) accept other than the lowest priced offer, and (3) waive informalities and minor irregularities in offers received.

(c) Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(d) The unconditional acceptance of an offer establishes a valid contract.

(End of Provision)

552.270-6 Parties to Execute Lease.

As prescribed in GSAR 570.701-6, insert the following provision:

Parties To Execute Lease (June 1985)

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

(b) If the Lessor is a partnership, the lease must be signed with the partnership name, followed by the name of the legally authorized partner signing the same.

(c) If the Lessor is a corporation, the lease must be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority so to act must be furnished.

(End of Provision)

552.270-7 thru 552.270-9 [Reserved]

10. Section 552.270-10 is revised to read as follows:

552.270-10 Definitions.

As prescribed in GSAR 570.702-1, insert the following clause:

Definitions (June 1985)

(a) The terms "contract" and "Contractor" shall mean "lease" and "Lessor," respectively.

(b) If the lease is a sub-lease, the term "Lessor" means the sub-lessor.

(c) The term "Lessor shall provide" means the Lessor shall furnish and install.

(End of Clause)

11. Section 552.270-11 and 552.270-12 are amended by revising the introductory text and the clause titles to read as follows:

552.270-11 Subletting the Premises.

As prescribed in GSAR 570.702-2, insert the following clause:

Subletting the Premises (June 1985)

* * * * *

552.270-12 Maintenance of Premises.

As prescribed in GSAR 570.702-3, insert the following clause:

Maintenance of Premises (June 1985)

* * * * *

12. Section 552.270-13 and 552.270-14 are revised to read as follows:

552.270-13 Damage by Fire or Other Casualty.

As prescribed in GSAR 570.702-4, insert the following clause:

Damage by Fire or Other Casualty (June 1985)

If the said premises be destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days thereafter; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

(End of Clause)

552.270-14 Condition Report.

As prescribed in GSAR 570.702-5, insert the following clause:

Condition Report (June 1985)

A joint physical survey and inspection report of the demised premises will be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

(End of Clause)

13. Section 552.270-15 is amended by revising the introductory text and clause title to read as follows:

552.270-15 Applicable Codes and Ordinances.

As prescribed in GSAR 570.702-6, insert the following clause:

Applicable Codes and Ordinances (June 1985)

* * * * *

14. Section 552.270–16, 552.270–17, and 552.270–18 are revised to read as follows:

552.270–16 Inspection of Premises.

As prescribed in GSAR 570.702–7, insert the following clause:

Inspection of Premises (June 1985)

At all times after receipt of offers, prior to or after acceptance of any offers, or during any construction, remodeling, or renovation work, the premises and the building or any parts thereof, upon reasonable and proper notice, must be accessible for inspection by the Contracting Officer, or by architects, engineers, or other technicians representing him, to determine whether the essential requirements of the solicitation or the lease requirements are met. Additionally, the Government reserves the right, upon reasonable notice, to inspect and perform bulk sampling and analysis of suspected asbestos-containing materials and to monitor the air for asbestos fibers in the space offered or under lease as well as other areas of the building deemed necessary by the Contracting Officer.

(End of Clause)

552.270–17 Failure in Performance.

As prescribed in GSAR 570.702–8, insert the following clause:

Failure in Performance (June 1985)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are dependent. In the event of failure by the Lessor to provide any of these items, the Government may by contract or otherwise perform the service, maintenance, utility, or repair, and charge to the Lessor any cost incurred by the Government that is related to the performance of such service, maintenance etc., including any administrative costs, and deduct such cost from any rental payments. Alternately, the Government may reduce rental payments by the corresponding value of the contract requirement not performed, as determined by the Contracting Officer. These remedies are not exclusive and are in addition to any other remedies which may be available under this contract or in the law.

(End of Clause)

552.270–18 Lessor's Successors.

As prescribed in GSAR 570.702–9, insert the following clause:

Lessor's Successors (June 1985)

The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

(End of Clause)

15. Section 552.270–19 is amended by revising the introductory text and the clause title to read as follows:

552.270–19 Alterations.

As prescribed in GSAR 570.702–10, insert the following clause: •

Alterations (June 1985)

* * * * *

16. Section 552.270–20 is revised and Sections 552.270–21 thru 552.270–30 are added to read as follows:

552.270–20 Proposals for Adjustment.

As prescribed in GSAR 570.702–11, insert the following clause:

Proposals for Adjustment (June 1985)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds $25,000. The proposal, including all subcontractor work, will contain at least the following details—

(1) Material quantities and unit costs,

(2) Labor costs (identified with specific item or material to be placed or operation to be performed),

(3) Equipment costs,

(4) Workman's compensation and public liability insurance,

(5) Overhead,

(6) Profit, and

(7) Employment taxes under FICA and FUTA.

(End of Clause)

Alternate I (June 1985)

For the acquisition of leasehold interests in real property of 10,000 square feet or more, add paragraphs (c) and (d) to the basic clause.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $100,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804–2),

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $100,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.804–4), and

(3) The agreement for "Price Reduction for Defective Cost or Pricing Data" must be signed and returned (48 CFR 15.804–8).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of Clause)

552.270–21 Changes.

As prescribed in GSAR 570.702–12, insert the following clause:

Changes (June 1985)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications.

(2) Work or services.

(3) Amount of space.

(4) Facilities or space layout.

(b) If any such change causes an increase or decrease in the Lessor's cost of, or the time required for, performance under this contract, whether or not changed by the order, the Contracting Officer shall modify the lease by (1) making an equitable adjustment in the rental rate, (2) making a lump sum price adjustment, or (3) revising the delivery schedule.

(c) If such change causes an increase in costs under this contract, the Lessor shall submit any "proposal for adjustment" (hereafter referred to as proposal) under the clause at 552.270–20, Proposal for Adjustment.

(d) Adjustments for operating expenses in vacant leased premises will be in accordance with the clause at 552.270–25, Adjustment for Vacant Premises.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(f) No services or work for which an additional cost or fee will be charged by the Lessor will be furnished without the prior written authorization of the Contracting Officer or a designated representative of the Contracting Officer.

552.270–22 Liquidated Damages.

As prescribed in GSAR 570.702–13, insert the following clause:

Liquidated Damages (June 1985)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum of $——— for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government.

(End of Clause)

552.270–23 Operating Costs.

As prescribed in GSAR 570.702–14, insert the following clause:

Operating Costs (June 1985)

(a) Beginning with the second year of the lease and each year after, the Government shall pay adjusted rent for changes in costs for cleaning services, supplies, materials, maintenance, trash removal, landscaping, water, sewer charges, heating, electricity, and certain administrative expenses attributable to occupancy. Applicable costs listed on GSA Form 1217, Lessor's Annual Cost Statement, when negotiated and agreed upon, will be used to determine the base rate for operating costs adjustment.

(b) The amount of adjustment will be determined by multiplying the base rate by the percent of change in the Cost of Living Index. The percent change will be computed by comparing the index figure published for the month prior to the lease commencement

date with the index figure published for the month which begins each successive 12-month period. For example, a lease which commences in June of 1985 would use the index published for May of 1985 and that figure would be compared with the index published for May of 1986, May of 1987, and so on, to determine the percent change. The Cost of Living Index will be measured by the U.S. Department of Labor revised Consumer Price Index for Wage Earners and Clerical Workers, U.S. City Average, All Items Figure, (1967=100) published by the Bureau of Labor Statistics. Payment will be made with the monthly installment of fixed rent. Rental adjustments will be effective on the anniversary date of the lease. Payment of the adjusted rental rate will become due on the first workday of the second month following the publication of the Cost of Living Index for the month prior to the lease commencement date.

(c) If the Government exercised an option to extend the lease term at the same rate as that of the original term, the option price will be based on the adjustment during the original term. Annual adjustments will continue.

(d) In the event of any decreases in the Cost of Living Index occuring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of such reductions will be determined in the same manner as increases in rent provided under this clause.

(e) The offer must clearly state whether the rental is firm throughout the term of the lease or if it is subject to annual adjustment of operating costs as indicated above. If operating costs will be subject to adjustment, it should be specified on block 19 of GSA Form 1364, Proposal to Lease Space, contained elsewhere in this solicitation.

(End of Clause)

552.270-24 Tax Adjustment.

As prescribed in GSAR 570.702-15, insert the following clause:

Tax Adjustment (June 1985)

(a) The Government shall pay additional rent for its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). Payment will be in a lump sum and become due on the first workday of the month following the month in which paid tax receipts for the base year and the current year are presented, or the anniversary date of the lease, whichever is later. The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.

(b) The Government's share for the tax increase will be based on the ratio of the square feet occupied by the Government to the total rentable square feet in the building. If the Government's lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Government occupied space. The payment will not include penalties for non payment or delay in payment. If there is any variance between the assessed value of the Goverment's space and other space in the building, the Government may adjust the basis for determining its shares of the tax increase.

(c) The Government may contest the tax assessment by initiating legal proceedings on behalf of the Government and the Lessor or the Government alone. If the Government is precluded from taking legal action, the Lessor shall contest the assessment upon reasonable notice by the Government. The Government shall reimburse the Lessor for all costs and shall execute all documents required for the legal proceedings. The Lessor shall agree with the accuracy of the documents. The Government shall receive its share of any tax refund. If the Government elects to contests the tax assessment, payment of the adjusted rent shall become due on the first workday of the month following conclusion of the appeal proceedings.

(d) In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases in rent provided under this clause.

(End of Clause)

552.270-25 Adjustment for Vacant Premises.

As prescribed in GSAR 570.702-16, insert the following clause:

Adjustment for Vacant Premises (June 1985)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part prior to expiration of the firm term of the lease, the rental rate will be reduced.

(b) The rate will be reduced by that portion of the costs per square foot of operating expenses not required to maintain the space. Said reduction must occur after the Government gives 30 calendar days prior notice to the Lessor, and must continue in effect until the Government occupies the premises or the lease expires or is terminated.

(End of Clause)

552.270-26 If Minimum Not Delivered.

As prescribed in GSAR 570.702-17, insert the following clause:

If Minimum Not Delivered (June 1985)

If delivered space contains less than the minimum square footage, the Government may cancel the lease. If such cancellation occurs, the Government may exercise its legal rights including charging the Lessor and its surety the increased cost of providing replacement space.

(End of Clause)

552.270-27 Delivery and Condition.

As prescribed in GSAR 570.702-18, insert the following clause:

Delivery and Condition (June 1985)

Unless the Government elects to have the space occupied in increments, the space must be delivery ready for occupancy as a compete unit. The Government reserves the right to determine when the space is ready to occupy.

(End of Clause)

552.270-28 Time Extensions.

As prescribed in GSAR 570.702-19, insert the following clause:

Time Extensions (June 1985)

The lease will not be terminated nor the Lessor charged with resulting damage if delays arise from unforeseeable causes beyond the control of the Lessor and/or his contractors, subcontractors, suppliers, or another Government contractor. However, the Lessor shall notify the Contracting Officer, in writing, of any delay within 10 calendar days after it begins. The Contracting Officer shall ascertain the facts, determine the extent of the delay, and grant extensions when justified.

(End of Clause)

552.270-29 Termination for Default.

As prescribed in GSAR 570.702-20, insert the following clause:

Termination for Default (June 1985)

If the Lessor fails to prosecute the work required to deliver the leased premises ready for occupancy by the Government with such diligence as will ensure delivery of the leased premises within the time required by the lease agreement, or any extension of the specified time, or if the Lessor fails to complete said work within such time, the Government may, by written notice to the Lessor, terminate the lease agreement. Regardless of whether the lease is terminated, the Lessor and his sureties shall be liable for any damage to the Government resulting from his failure to deliver the premises ready for occupancy within the specified time.

(End of Clause)

552.270-30 Progressive Occupancy.

As prescribed in GSAR 570.702-21, insert the following clause:

Progressive Occupancy (June 1985)

The Government shall pay rent only when the entire premises or suitable units are ready for occupancy. If the agency occupies the space in partial increments, rent will accrue or be paid on a pro rata basis. Rental payments shall become due on the first workday of the month following the month in which an increment of space is occupied, except that should an increment of space be occupied after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was occupied. The commencement date of the firm term will be a composite determined from all dates of incremental occupancy.

(End of Clause)

17. The table of contents for Part 553 is amended by adding entries for

Sections 533.370–3516 and 553.370–3518 as set forth below:

PART 553—FORMS

Subpart 553.3—Illustrations of Forms

* * * * *

Sec.

553.370–3516 GSA Form 3516, Solicitation Provisions (Acquisition of Leasehold Interests in Real Property)

553.370–3518 GSA Form 3518, Representations and Certifications (Acquisition of Leasehold Interests in Real Property)

* * * * *

Authority: 40 U.C.S. 486(c).

18. Section 553.173 is amended by adding the following to the list of forms referenced in paragraph (c).

553.173 Responsibility for the maintenance of forms.

* * * * *

(c) * * *

GSA Form No.	Responsible office
3516	P
3517	P
3518	P

* * * * *

19. The table of contents for Parts 570 is amended by revising the entries for sections within Subparts 570.3, 570.6, and 570.7 to read as set forth below:

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

Subpart 570.3—Special Aspects of Contracting For Leasehold Interests Less Than 10,000 Square Feet

Sec.

570.300 Scope of subpart.
570.301 Definitions.
570.302 Purpose.
570.303 Policy.
570.304 Procedures.
570.304–1 General.
570.304–2 Market survey.
570.304–3 Advertising.
570.304–4 Soliciting offers.
570.304–5 Negotiation and award.
570.304–6 Inspection and certification.

* * * * *

Subpart 570.6—Special Aspects of Contracting for Lease Alterations

570.600 Scope of subpart.
570.601 General.
570.602 Alterations by the Lessor.
570.602–1 Justifications and approval requirements.
570.602–2 Procedures.
570.603 Alterations by the Government.

Subpart 5707.7—Solicitation Provisions and Contract Clauses

570.701 Solicitation provisions.
570.701–1 Preparation of offers.
Sec.
570.701–2 Explanation to prospective offerors.
570.701–3 Late submission, modifications, and withdrawal of offers.
570.701–4 Historic preference.
570.701–5 Lease award.
570.701–6 Parties to execute lease.
570.701–7 Reserved.
570.701–8 Reserved.
570.701–9 Reserved.
570.702 Contract clauses.
570.702–1 Definitions.
570.702–2 Subletting the premises.
570.702–3 Maintenance of premises.
570.702–4 Damage by fire or other casualty.
570.702–5 Condition report.
570.702–6 Applicable codes and ordinances.
570.702–7 Inspection of premises.
570.702–8 Failure in performance.
570.702–9 Lessor's successors.
570.702–10 Alterations.
570.702–11 Proposals for adjustment.
570.702–12 Changes.
570.702–13 Liquidated damages.
570.702–14 Operating costs.
570.702–15 Tax adjustment.
570.702–16 Adjustment for vacant premises.
570.702–17 If minimum not delivered.
570.702–18 Delivery and condition.
570.702–19 Time extensions.
570.702–20 Termination for default.
570.702–21 Progressive occupancy.

Authority: 40 U.S.C. 486(c).

20. Section 570.101, 570.102, 570.105, and 570.106 are revised to read as follows:

570.101 Applicability.

(a) The requirements of this part apply to the acquisition of leasehold interests in real property.

(b) The requirements of this part do not apply to the acquisition of leaseshold interests in real property by the power of eminent domain or donation.

(c) The requirements of this part do not apply to the acquisition of leasehold interest in bare or unimproved land.

(d) The GSAR applies to the acquisition of leasehold interests in real property only to the extent specified in this part and § 501.103(b).

570.102 Definitions.

(a) "Acquisition" means the acquiring by lease with appropriated funds of an interest in improved real property for use by the Federal Government whether the space is already in existence or must be constructed. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, market survey, solicitation, award of lease, lease performance, lease administration, and those technical and management functions directly related to the process of fulfilling agency space needs by contract.

(b) "Contract" means lease.

(c) "Contractor" means lessor.

(d) "Fair Rental" means the amount of the rental which reasonably can be expected to be paid for the lease of real property as established by competition and/or by a value estimate based on accepted real property appraisal procedures.

(e) "Lease" or "leasehold interests in real property" means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include services provided by the landlord such as heating, ventilation, air conditioning, utilities, custodial services, and other related services furnished by the landlord.

(f) "Lessee" or "tenant" means the United States of America.

(g) "Lessor" or "landlord" means any individual, firm, partnership, trust, association, or other legal entity which leases property to the Government.

(h) "Rent and related services" means the consideration paid for the use of leased property plus the costs of operational services such as heat, light, and janitor services whether furnished by the lessor, the Government, or both.

(i) "Small business" means a concern including affiliates, which is organized for profit, is independently owned and operated, is not dominant in the field of leasing commercial real estate, and has annual average gross receipts of $10 million or less for the preceding three fiscal years.

(j) "Space" means the premises leased, or to be leased. The quantity of space is most often expressed in terms of square feet.

(k) "Solicitation for Offers (SFO)" means invitation for bids in sealed bidding or request for proposals in negotiations.

(l) "Substantially as follows" or "substantially the same as", when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accomodate requirements that are peculiar to an individual acquisition; provided, that the variation includes the salient features of the FAR/GSAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR/GSAR provision or clause or related coverage on the subject matter.

570.105 Competition.

(a) The competition requirements of FAR Part 6 and GSAR Part 506 apply to the acquisition of leasehold interest in real property.

(b) Contracts involving the acquisition of leasehold interests in real property

shall be awarded through the use of competitive procedures (sealed bidding or negotiation), unless the use of other than full and open competition is permitted by one of the exceptions in FAR 6.302.

(c) The acquisitions of leased space through other than full and open competition must be held to the smallest number practicable and be justified in writing and approved in accordance with FAR 6.303, 6.304, and GSAR 506.304.

570.106 Methods of contracting.

(a) *Sealed bidding.* The use of sealed bidding in connection with the leasing of real property is generally not feasible, unless a building site has been preselected and a building is to be constructed on the site in accordance with Government furnished plans and specifications for lease to the Government. When using sealed bidding procedures, the provisions of FAR Part 14 and GSAR Part 514 must be followed.

(b) *Negotiation.* The negotiated method of contracting is normally the best suited for acquiring space through a lease contract because it is necessary to conduct discussions with responding offerors about their proposals and factors other than price must be considered in making the award.

21. Section 570.201 and 570.202 are revised to read as follows:

570.201 Market surveys.

In order to promote full and open competition with due regard for the nature of the space to be acquired, a market survey must be conducted for all proposed acquisitions of space. The survey may be conducted by Government employees or by contractor personnel. The market survey must include—

(a) Solicitation of information on the availability of space through the use of circulars or newspaper advertisements and consultations (telephonically or in person) with realtors, brokers, owners, and others, as appropriate.

(b) An inspection of all offered and other available locations that appear to meet the minimum requirements regarding quantity, quality, availability, and probable cost.

(c) Documentation of the survey findings for each location inspected, including the reasons for unacceptability and identity of the interested parties that should be forwarded a solicitation for offers.

570.202 Advertising.

(a) Government space requirements for blocks of space of 10,000 or more square feet must be publicized in local newspapers and/or periodicals unless exempt under FAR 5.202 or GSAR 505.202. Requirements for blocks of space of less than 10,000 square feet may be publicized when the contracting officer determines such advertising will serve to promote competition.

(b) When the Government proposes the acquisition of leasehold interests in a building to be constructed on a preselected site, the proposed acquisition shall be publicized (synopsized) in the Commerce Business Daily (CBD) at least 15 days prior to issuance of the SFO.

(c) For further information on advertising and synopsizing refer to FAR Part 5 and Part 505 of this regulation.

22. Section 570.203 is amended by revising the introductory text of paragraph (a), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(5), (a)(7), (a)(7)(iii), (a)(7)(iv), (a)(8), (a)(9), (b), and (c) to read as follows:

570.203 Solicitation for offers (SFO).

(a) The SFO is the basis for the entire lease negotiation process and must be made a part of the lease. SFO's must contain the information necessary to enable the prospective offeror to prepare a proposal. Each solicitation, as a minimum, must—

(1) * * *

(2) Contain a description of the minimum requirements of the Government, including—

(i) A description of the required space.

(ii) Specifications. The type of specification shall depend upon the nature of the space needs of the agency and the market available to satisfy such needs. Specifications may be stated in terms of function, performance, or design requirements. The specification shall be drafted to promote full and open competition and shall include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(iii) Any special requirements.

* * * * *

(5) Advise that offers will be evaluated based only on the initial lease term, unless otherwise specified.

* * * * *

(7) Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and state the relative importance the Government places on those evaluation factors and subfactors. Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation must inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

* * * * *

(iii) When lump sum payments for initial tenant alterations are solicited, the lowest offer as to price will be determined by adding to the annual square foot rate (or the composite square foot rate) the result of the lump sum amount amortized over the firm term of the lease (i.e., divided by number of years in the term) divided by the square footage offered.

(iv) The factors that will be considered in evaluating proposals should be tailored to each acquisition and include only those factors that will have an impact on the award decision. The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of the contracting officer. However, price or cost to the Government must be included as an evaluation factor in every case. Other evaluation factors that may apply to a particular acquisition are the availability of public transportation, the availability of adequate food service within a reasonable distance, the use of renewable energy, and any other relevant factors.

(8) Include provisions and clauses substantially the same as those listed on the matrix at GSAR 552.370 when the prescription for use of the provision or clause requires its use. The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved in accordance with the procedures in Subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g. FAR 52.203–5, Covenant Against Contingent Fees; FAR 52.203–1, Officials Not to Benefit, FAR 52.215–1, Examination of Records by the Comptroller General, etc.) in order to modify the language of the provision or clause. However, deviations to omit such provisions and clauses may not be granted, unless the statute provides for waiving the requirements of the clause.

(9) Include appropriate forms as prescribed in Subpart 570.8.

(b) The initial release of SFO's must be made to all prospective offerors at the same time.

(c) Copies of each SFO must be maintained at the issuing office until an award has been made. A reasonable number should be duplicated and made available upon request to individuals and firms having an interest.

23. Section 570.205 is revised to read as follows:

§ 570.205 Negotiations.

(a) Negotiations will be conducted with all offerors that are within the competitive range. The contracting officer shall determine the competitive range on the basis of cost and other factors that were stated in the solicitation and shall include in the competitive range all offers that have a reasonable chance of being selected for award. When there is doubt as to whether an offer is in the competitive range, the offer should be included.

(b) The content and extent of the negotiations is a matter of the contracting officer's judgement based on the particular facts of each acquisition. The contracting officer shall—

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its offer so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the offer;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its offer that may result from the discussion.

(c) No indication may be given to any offeror of a price which must be met since such practice constitutes an auction technique which is to be avoided. Likewise, no offeror should be advised of his relative standing with other offerors.

(d) After receipt of offers, no information regarding the number or identity of the offerors participating in the negotiation may be made available to anyone whose official duties do not require such knowledge.

(e) Negotiations must be closed by establishing a date and time for closing of negotiations and requesting in writing that offerors submit a "best and final offer" by that date.

(f) Negotiations may not be conducted after the closing date for best and final offers unless negotiations are reopened with all offerors in the competitive range.

(g) Negotiations must be confidential and reflect complete agreement on all items and conditions of the lease contract. Information regarding the transaction will not be announced or made available until after the contract is awarded.

(h) A written negotiation record must be placed in the lease file.

24. Section 570.206 is amended by revising paragraph (a) to read as follows:

570.206 Evaluating offers.

(a) An abstract of final offers must be prepared to aid in the analysis of offers received.

* * * * *

25. Section 507.208 is revised to read as follows:

570.208 Preaward requirements.

Before making a lease award, the following actions are required—

(a) *Cost or pricing data.* (1) Cost and pricing data are required under the circumstances described in FAR 15.804–2.

(2) The exemptions from and waivers of submission of certified cost or pricing data are outlined in FAR 15.804–3. The competition exemption applies when adequate price competition, as defined in FAR 15.804–3(b), is obtained. The market price exemption from submission cost or pricing data may be applied to proposed leases where there is evidence that the price is based on an established market price for similar space leased to the general public. A market survey and an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the market price. The contracting officer may grant an exemption and need not require the prospective lessor submit a Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when there is evidence, before solicitation, that there is an acceptable established market price (see FAR 15.804–3(e)(3)).

(3) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived in accordance with FAR 15.804–3(i) and GSAR 515.804–3.

(4) When certified cost or pricing data are required, the contracting officer shall follow the procedural requirements in FAR 15.804–6.

(5) In the event the proposed lessor refuses to provide the data, when required, the contracting officer shall follow the procedures in GSAR 515.804–70.

(b) *Appraisal.* When the annual net rental exceeds $2,000, an appraisal of the fair rental must be obtained for the property to be leased.

(c) *Proposal evaluation.* (1) The contracting officer shall use cost or price analysis to evaluate the offers in accordance with the general guidance provided in FAR 15.805. The contracting officer shall document the lease file to demonstrate that the fair rental value has been properly established and show how it relates to the proposed contract rental.

(2) The lease file must also document the evaluation of other award factors listed in the solicitation. The file should include the basis for evaluation, an analysis of each offer, and a summary of findings.

(d) *Financial responsibility.* (1) A determination must be made that the prospective offeror is financially responsible with respect to the lease being considered. The contracting officer's signature on the contract is deemed to be an affirmative determination. The market survey will constitute adequate support for the determination, unless new construction is involved.

(2) When the offer involves new construction, the contracting officer shall request the Credit and Finance Branch, Region 2, to evaluate the offeror's financial status, unless the offeror has been evaluated and found satisfactory within the past year. The contracting officer shall consider the information provided by the Credit and Finance Branch and make a determination as to the lessor's financial responsibility.

(3) In other cases where the contracting officer has reason to question the lessor's financial ability to perform, a responsibility check must be requested from the Credit and Finance Branch.

(4) All documents generated as a result of financial responsibility checks must be placed in the permanent lease file.

(e) In order to comply with the warranty requirement of 41 U.S.C. 254(a) concerning contingent fees, the requirements of FAR Subpart 3.4 and Subpart 503.4 must be followed.

(f) Applicable certifications as prescribed in § 552.370 shall be reviewed for compliance with regulations.

(g) Leases must be cleared in accordance with the requirements of GSA Order, Contract Clearance (APD 2800.1B).

26. Section 507.209 is amended by revising paragraph (a) and adding paragraph (c) and (d) to read as follows:

570.209 Award.

(a) An award will be made to the responsible offeror whose proposal is most advantageous to the Government

considering price and other factors included in the solicitation.

* * * * *

(c) Unsuccessful offerors will be notified in writing, of the award.

(d) All proposals received in response to a solicitation may be rejected if the head of the contracting activity determines that action is in the public interest. This authority may be redelegated.

27. Section 570.210 is amended by revising paragraph (b) to read as follows:

570.210 Inspection and certification.

* * * * *

(b) Certify that the space is in substantial compliance with the Government's requirements and specifications prior to occupancy.

28. Subparts 570.3, 570.4, 570.5, 570.6, and 570.7 are revised to read as follows:

Subpart 570.3—Special Aspects of Contracting for Leasehold Interests in Real Property

570.300 Scope of subpart.

This subpart prescribes policies and procedures for the acquisition of leasehold interests in real property when blocks of space of less than 10,000 square feet are required.

570.301 Definitions.

"Small lease" means an acquisition of leasehold interest in real property involving blocks of space of less than 10,000 square feet using the procedures prescribed in this subpart.

"Small lease procedure" means the method prescribed in this subpart for making small leases using a simplified process and a short form lease contract.

570.302 Purpose.

The purpose of this subpart is to prescribe simplified procedures for small leases in order to reduce administrative costs while providing for the efficient and economical acquisition of leasehold interests in real property.

570.303 Policy.

The procedures prescribed in this subpart should be used to the maximum extent practicable for acquisition of leasehold interests in real property involving blocks of space aggregating less than 10,000 square feet.

570.304 Procedures.

570.304-1 General.

(a) The small lease procedures contemplate the contracting officer or a representative will visit the area where space is required to—

(1) locate and inspect buildings where space may be available to satisfy the Government's requirements;

(2) present a proposed short form lease to prospective offerors together with a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and stating the relative importance the Government places on the evaluation factors or subfactors;

(3) ask the prospective offerors to review the proposed lease and provide an offer;

(4) negotiate directly with the offerors while on location; and

(5) award the lease.

(b) This procedure does not eliminate the requirements for legal review, contract clearance, etc. if the lease would be subject to such requirements based on the amount of the transaction or the nature of the agreement.

570.304-2 Market survey.

A market survey must be conducted in accordance with GSAR 570.201. The market survey is a crucial aspect of the small lease procedure.

570.304-3 Advertising.

Requirements may be publicized in local newspapers and/or periodicals when the contracting officer determines such advertising will serve to promote competition. For further information on advertising, refer to FAR Part 5 and Part 505.

570.304-4 Soliciting offers.

(a) Offers must be solicited by presenting each prospective offeror with a proposed short form lease and a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and stating the relative importance the Government places on the evaluation factors or subfactors.

(b) The proposed lease must describe the Governments requirements and include applicable provisions and contract clauses substantially the same as those listed on the matrix at GSAR 552.370.

570.304-5 Negotiation and award.

The policies and procedures in GSAR 570.205, GSAR 570.208 and GSAR 570.209 must be followed.

570.304-6 Inspection and certification.

A Government representative shall inspect the space and certify that the space is in substantial compliance with the Government's requirements and specifications prior to occupancy.

Subpart 570.4—Mistakes, Protests, Miscellaneous

570.401 Disclosure of mistakes after award.

When a mistake in a lessor's offer is not discovered until after award, the mistake must be handled as provided in FAR 14.406-4 and Subpart 514.4.

570.402 Protests.

Protests regarding the award of lease contracts must be handled as provided in FAR Subpart 33.1 and GSAR Subpart 533.1.

570.403 Awards to Federal employees.

(a) Offers to lease space received from officers or employees of the Government must be handled as provided in FAR Subpart 3.6.

(b) The head of the contracting activity may authorize an exception under the circumstances in FAR 3.602.

Subpart 570.5—Special Aspects of Contracting for Continued Occupancy in Leased Space

570.501 Renewal options.

(a) *Exercise of options.* Before exercising an option, the provisions of GSAR Part 517 must be followed.

(b) *Notification.* When a contracting officer determines that it is in the best interest of the Government to continue to lease a property, the lessor must be notified within the time frame required by the lease.

(c) *Market survey.* When the right to renew a lease exists, a renewal must be based on a market survey and other applicable considerations. Surveys should focus on the prevailing rental rates for comparable space.

(d) *Reappraisal.* The original appraisal must be updated (e.g., by memorandum) or a new appraisal performed when the annual net rental exceeds $2,000.

(e) *Cancellation.* When a determination is made that a lease which has an automatic renewal clause is no longer required, the lessor will be notified in writing that the lease has been canceled.

570.502 Succeeding leases.

(a) *General.* Succeeding leases for the continued occupancy of space in a building may be entered into when a cost-benefit analysis has been conducted and the results indicate that an award to an offeror other than the present lessor would result in substantial relocation and duplication costs to the Government that are not expected to be recovered through competition.

(b) *Procedure.*—(1) *Advertising.* The contracting officer shall publish a notice in local newspapers and/or periodicals when blocks of space of 10,000 or more square feet are involved. The notice should normally (i) indicate the Government's lease is expiring, (ii) describe the agency's needs in terms of type and quantity of space, (iii) indicate the Government is interested in considering alternative space if economically advantageous, (iv) advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate, and (v) tell interested parties who to contact if they are interested in providing space to the Government.

(2) *Market Survey.* A market survey shall be conducted in accordance with GSAR 570.201.

(3) *Competition determination.*

(i) If no potential acceptable locations are identified through the notice or the market survey, the contracting officer may prepare a justification to negotiate directly with the present lessor. The justification must be prepared and approved in accordance with FAR 6.3 and GSAR 506.3 and should fully document the efforts to locate alternative sources.

(ii) If potential acceptable locations are identified through the advertisement or market survey and relocation costs (including estimated moving costs, telecommunications costs, and the estimated cost of alterations, amortized over the first term of the lease) are not significant enough to preclude recovery of such costs through competition, the contracting officer may proceed to develop a formal SFO and negotiate with all interested parties in accordance with the procedures in GSAR 570.2 or GSAR 570.3.

(iii) If potential acceptable locations are identified through the advertisement or market survey and substantial relocation costs are involved, the contracting officer shall conduct a cost-benefit analysis to determine whether the duplication of costs to the Government could be recovered through competition. The cost-benefit analysis must give consideration to the prices of other potentially available properties, relocation costs, and other appropriate considerations. The prices for other potentially available properties must be established by requesting the prospective offeror to provide an informational quotation for standard space for comparison purposes. The prices quoted for standard space will be adjusted by the Government for special requirements. A formal solicitation for offers (SFO) is not required for the purpose of obtaining the informational quotation. The contracting officer shall provide a general description of the Government's needs when requesting informational quotations. If oral quotations are provided, the record must be documented to reflect the following information, as a minimum: the name and address of the firm solicited, the name of the firm's representative providing the quote, the price(s) quote, the description of the space and services for which the quote is provided, the name of the Government employee soliciting the quotation, and the date of the conversation. The informational quotations shall be compared to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease. Based on the results of the cost-benefit analysis, the contracting officer will—

(A) Prepare a justification for approval in accordance with FAR 6.3 and GSAR 506.3 to support the determination to negotiate with the present lessor for continued occupancy because it is likely that award to any other offeror would result in substantial duplication of costs to the Government that are not expected to be recovered through competition, or

(B) Develop a formal SFO and negotiate with all interested parties in accordance with the procedures in Subpart 570.2 or 570.3.

570.503 Expansion requests.

(a) When the expansion space needed is within the general scope of the lease, the space may be acquired through a modification to the lease.

(b) When the expansion space needed is outside the general scope of the lease, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement through relocation. A market survey shall be conducted to determine whether suitable alternate locations are available. If the market survey reveals alternate locations which can satisfy the total requirement, a cost-benefit analysis shall be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location,

(2) The cost of moving,

(3) The cost of duplicating existing improvements, and

(4) The cost of the unexpired portion of the firm term lease (unless a termination is possible, in which case the actual cost of such an action should be used).

(c) If no suitable alternative location is available and the cost of the space exceeds $25,000, a justification may be prepared for approval in accordance with FAR 6.3 and GSAR 506.3 in order to negotiate a Supplemental Lease Agreement to provide expansion space, provided the original lease term is not extended. When the cost is $25,000 or less, the contracting officer must prepare the justification for inclusion in the file.

570.504 Superseding leases.

(a) Consideration should be given to the execution of a superseding lease which would replace the existing lease when the changes or modifications to the space contemplated are so numerous or detailed as to cause complications, or would substantially change the present lease.

(b) The justification and approval requirements in FAR 6.3 and GSAR 506.3 must be complied with before negotiating a superseding lease if the amount of the lease for the firm term exceeds $25,000. When the cost is $25,000 or less, the contracting officer must prepare a justification for inclusion in the file.

570.505 Lease extensions.

(a) The justification and approval requirements in FAR Subpart 6.3 and GSAR Subpart 506.3 must be complied with before negotiating a Supplemental Lease Agreement exceeding $25,000 to extend the term of the lease to provide for continued occupancy on a short term basis (usually not to exceed 1 year). For extensions of $25,000 or less the contracting officer must prepare the justification for inclusion in the contract file.

(b) FAR 6.302–1 provides for contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may be used to extend the term of a lease by supplemental agreement in situations such as the following:

(1) When the agency occupying the leased space is scheduled to move into other Federally controlled space but unexpected delays are encountered in preparing the new space for occupancy.

(2) When unexpected delays which are outside of GSA's control (i.e., protests, etc.) are encountered in acquiring replacement space.

(3) When various agencies occupying leased space are being consolidated and

it is necessary to extend the terms of some leases to establish a common expiration date.

Subpart 570.6—Special Aspects of Contracting for Lease Alterations

570.600 Scope of subpart.

This subpart prescribes policies and procedures for contracting for alterations of real property leased by GSA.

570.601 General.

(a) Although the Government generally has a contractual right to alter the space leased, normally most alterations are acquired through a modification to the lease because they fall within the general scope of the lease and it is in the Government's interest to acquire the alterations from the lessor.

(b) As the need for alterations arise during the term of a lease contract, the contracting officer must examine each project and make a determination as to whether the alterations fall within the general scope of the lease and may be acquired through a modification to the lease. The primary test is whether the work should be regarded as fairly and reasonably an inseparable part of the lease requirement originally contracted for. If the alterations are outside the general socpe, the contracting officer must make a decision to acquire the alterations through a separate contract, through a Supplemental Lease Agreement, or to request the work be performed by Federal employees.

570.602 Alterations by the Lessor.

570.602-1 Justifications and approval requirements.

(a) The justification and approval requirements in FAR Subparts 6.3 and GSAR 506.3 must be complied with before negotiating directly with the lessor for any alteration project exceeding $25,000 which is outside the general scope of the lease contract.

(b) Before negotiating directly with the lessor for any alteration project of $25,000 or less, which is outside the general scope of the lease, the contracting officer shall document, in writing, the reasons for the absence of competition.

570.602-2 Procedures.

(a) *Scope of work.* A scope of work must be prepared for all alteration projects.

(b) *Independent Government estimate.* An independent Government estimate must be prepared for all alteration projects, including changes to alteration agreements with lessors.

(c) *Request for proposal.*

(1) The lessor shall be provided with a scope of work, including any plans and specifications which have been developed, and shall be requested to submit a proposal. The request for proposal should indicate whether progress payments will be made and provide for retainage, when appropriate.

(2) The proposal shall be requested to be submitted in such detail that a cost or price analysis can be made.

(3) The requirements for the submission of certified cost or pricing data outlined in FAR 15.804–2 apply to alteration projects over $100,000. The procedural requirements at FAR 15.804–6 must be followed when requesting cost and pricing data. Exemptions from or waivers to submission or certified cost or pricing data must be processed in accordance with the requirements of FAR 15.804–3 and GSAR 515.804–3. If the lease does not include the clauses at FAR 52.215–22 and 52.215–24 or the clauses at FAR 52.215–23 and 52.215–25, the modification to the lease for the alterations must add the clauses at FAR 52.215–23 and 52.215–25 if cost and pricing data is submitted.

(d) *Audits.* Unless the cost or pricing data requirement is exempt or waived in accordance with FAR 15.804–3 and GSAR 515.804–3, an audit must be requested for negotiated alterations to be performed during the term of the lease which exceed $500,000. Initial space alterations are considered in the award of the lease contract. Therefore, when the lease is exempted from the requirement for submission of cost or pricing data, the initial space alterations fall under that exemption.

(e) *Evaluation of proposals.* (1) Determine whether the proposal will meet the Government's requirements.

(2) Analyze cost as compared to the independent estimate and the audit.

(3) Analyze profit in accordance with FAR Subpart 15.9 if the project exceeds $25,000.

(4) Document analysis leading to negotiation objectives developed from (1) through (3) of this paragraph.

(f) *Price negotiations.* (1) The contracting officer is responsible for exercising sound judgment and may make reasonable compromises as necessary.

(2) The negotiated price should provide the lessor with the greatest incentive for efficient and economical performance.

(3) Negotiations shall be documented by a price negotiation memorandum.

(g) *Award.* Alterations may be procured using the GSA Form 276, Supplemental Lease Agreement, or the GSA Form 300, Order for Supplies or Services (alteration project of $25,000 or less) provided a reference is made to the lease and the provisions of Section 332 of the Economy Act of June 30, 1932, (47 Stat. 412), as amended, are met.

(h) *Inspection and payment.* Final payment for alterations shall not be made until the work is—

(1) Inspected by a qualified Government employee or independent Government contractor, and

(2) Certified as completed in a satisfactory manner.

570.603 Alterations by the Government.

When the Government elects to exercise its rights to make the alterations rather than contract directly with the lessor, the work may be performed by Federal employees or may be contracted out using all of the standard contracting procedures that would apply to a construction contract if the work were to be performed on Federal property. If the Government decides to contract for the work, the lessor, as well as all other prospective contractors, should be invited to submit an offer for the project.

Subpart 570.7—Solicitation Provisions and Contract Clauses

570.701 Solicitation provisions.

570.701-1 Preparation of offers.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270–1, Preparation of Offers, in solicitations for leasehold interests in real property.

570.701-2 Explanation to prospective offerors.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270–2, Explanation to Prospective Offerors, in solicitations for leasehold interests in real property.

570.701-3 Late submissions, modifications, and withdrawals of offers.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270–3, Late Submissions, Modifications, and Withdrawals of Offers, in solicitations for leasehold interests in real property.

570.701-4 Historic preference.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270–4, Historic Preference, in solicitations for leasehold interests in real property when the market survey indicates that space is available in both historic and non-historic buildings.

570.701-5 Lease award.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-5, Lease Award, in solicitations for leasehold interests in real property.

570.701-6 Parties to execute lease.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-6, Parties to Execute Lease, in solicitations of leasehold interests in real property.

570.701-7 [Reserved]

570.701-8 [Reserved]

570.701-9 [Reserved]

570.702 Contract clauses.

570.702-1 Definitions.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-10, Definitions, in solicitations and contracts for leasehold interests in real property.

570.702-2 Subletting the premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-11, Subletting the Premises, in solicitations and contracts for leasehold interests in real property.

570.702-3 Maintenance of premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-12, Maintenance of premises, in solicitations and contracts for leasehold interests in real property.

570.702-4 Damage by fire or other casualty.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.207-13, Damage by Fire or Other Casualty, in solicitations and contracts for leasehold interests in real property.

570.702-5 Condition report.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-14, Condition Report, in solicitations and contracts for leasehold interests in real property.

570.702-6 Applicable codes and ordinances.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-15, Applicable Codes and Ordinances, in solicitations and contracts for leasehold interests in real property.

570.702-7 Inspection of premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-16, Inspection of Premises, in solicitations and contracts for leasehold interests in real property.

570.702-8 Failure in performance.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-17, Failure in Performance, in solicitations and contracts for leasehold interests in real property.

570.702-9 Lesssor's successors.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-18, Lessor's Successors, in solicitations and contracts for lease-hold interests in real property.

570.702-10 Alterations.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-19, Alterations, in solicitations and contracts for leasehold interests in real property.

570.702-11 Proposals for adjustment.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-20, Proposals for Adjustment, in solicitations and contracts for leasehold interests in real property. If the lease is for 10,000 square feet or more, the contracting officer shall use the clause with its Alternate I.

570.702-12 Changes.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-21, Changes, in solicitations and contracts for leasehold interests in real property.

570.702-13 Liquidated damages.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-22, Liquidated Damages, in solicitations and contracts for leasehold interests in real property when there is a critical requirement that the delivery date be met and an actual cost cannot be established for the loss to the Government resulting from late delivery.

570.702-14 Operating costs.

If the contracting officer determines operating cost escalation is necessary, a clause substantially the same as the clause at GSAR 552.270-23, Operating Costs, must be included in solicitations and contracts for leasehold interests in real property.

570.702-15 Tax adjustment.

If the contracting officer determines tax escalation is necessary, a clause substantially the same as the clause at GSAR 552.270-24, Tax Adjustment, must be included in solicitations and contracts for leasehold interests in real property.

570.702-16 Adjustment for vacant premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-25, Adjustment for Vacant Premises, in solicitations and contracts for leasehold interests in real property.

570.702-17 If minimum not delivered.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-26, If Minimum Not Delivered, in solicitations and contracts for leasehold interests in real property.

570.702-18 Delivery and condition.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-27, Delivery and Condition, in solicitations and contracts for leasehold interests in real property.

570.702-19 Time extensions.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-28, Time Extensions, in solicitations and contracts for leasehold interests in real property.

570.702-20 Termination for default.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-29, Termination for Default, in solicitations and contracts for leasehold interests in real property.

570.702-21 Progressive occupancy.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-30, Progressive Occupancy, in solicitations and contracts for leasehold interests in real property.

29. Section 570.801 is amended by revising paragraph (b) to read as follows:

570.801 Standard forms.

* * * * *

(b) Page 1 of the standard Form 2-B, U.S. Government Lease for Real Property (Short Form), may be used to award leases for less than 10,000 square feet. Page 2 of the form should not be used because the clauses are obsolete.

30. Section 570.802 is revised to read as follows:

570.802 GSA forms.

(a) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases which involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, rental payments, payments for overtime services, restoration settlements, and alterations.

(b) GSA Form 387, Analysis of Values Statement, should be used to demonstrate that the fair rent value of the leased space is proper.

(c) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offers.

(d) GSA Form 3516, Solicitation Provisions, should be included as a part of all solicitations for the acquisition of leasehold interests in real property.

(e) GSA Form 3517, General Clauses, should be included as a part of all solicitations and contracts for the acquisition of leasehold interests in real property.

(f) GSA Form 3518, Representations and Certifications, should be included as a part of all solicitations for the acquisition of leasehold interest in real property.

Dated: June 13, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85-16048 Filed 7-3-85; 8:45 am]

BILLING CODE 6820-61-M

Proposed Rules

Federal Register
Vol. 50, No. 129
Friday, July 5, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 417

[Docket No. 2518S]

Sugarcane Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Crop Insurance Corpration (FCIC) hereby publishes this notice for the propose of withdrawing a Notice of Proposed Rulemaking (NPRM) revising and reissuing the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1986 and succeeding crop years. The intent of this notice is to withdraw the NPRM because sufficient time was not available to complete the period for public comment and issue a final rule for filing under the provisions of 7 CFR Part 417. The authority for this action is contained in the Federal Crop Insurance Act, as amended.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Croporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Thursday, May 30, 1985, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 50 FR 23017, proposing to revise and reissue the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1936 and succeeding crop years.

The provisions of 7 CFR Part 417 provided that any changes in the terms and conditions of the contract will be available at the service office by May 31.

On Thursday, May 30, 1985, FCIC published an Interim Rule in the **Federal Register** at 50 FR 22969, amending the Sugarcane Crop Insurance Regulations (7 CFR Part 417) effective for the 1985 crop year only, by extending the date for filing contract changes from May 31, 1985 to June 30, 1985.

FCIC could not meet the extended date of June 30 for filing changes.

For the reasons stated above, the Notice of Proposed Rulemaking, published on May 30, 1985, at 50 FR 23017 is hereby withdrawn.

Done in Washington, D.C., on June 18, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 27, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 16056 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-60-AD]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require initial and subsequent periodic inspections for accumulated water in elevator trailing edge panels. This AD is required because a significant amount of water in the trailing edge of the elevator can create an unbalance, which can cause a flutter instability to occur within the normal flight envelope. This condition, if not corrected, can result in major structural damage to the airplane.

DATE: Comment must be received no later than August 1, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-60-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-60-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Lockheed L-1011 elevator assembly was delivered with two types on non-metallic trailing edges. Lockheed Airplane Serial Numbers -1001 through -1101 used fiberglass panels, and Airplane Serial Number -1102 through

–1250 used Kevlar/Nomex honeycomb panels. It has been reported that significant quantities of water were found entrapped in some of the Kevlar/Nomex honeycomb elevator trailing edge panels of the L–1011. The weight of this accumulated water could cause an unacceptable unbalance of the elevator, which could result in flutter and could lead to serious airframe structural damage within the normal flight envelope of the airplane.

Since this situation is likely to exist or develop on other airplanes of this same type design, an AD is proposed to require periodic inspections for accumulated water in elevator trailing edge panels.

It is estimated that 100 airplanes of U.S. registry will be affected by this AD, that it would take approximatly 11 manhours per airplane to accomplish the required inspection, and that the average labor cost would be $40 per manhour. For airplanes that require replacement elevator trailing edge panels, the cost for parts is approximately $3,000 per airplane and would require approximately 157 manhours for installation. Based on these figures, the total cost impact of the AD is estimated to be $972,000.

For these reasons, the FAA has determined that this document involves (1) a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]; and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L–1011 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1,354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised, Pub. L. 97–449, January 12, 1983]; 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L–1011 series airplanes, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent the potential of major structural damage to the airplane due to flutter divergence as a result of water retention in the elevator trailing edge panels, accomplish the follows:

(a) Within 300 hours time-in-service after the effective date of this AD, inspect the elevator trailing edges for water entrapment in accordance with Lockheed Service Bulletin 093–55–026 dated November 20, 1984 or later FAA approved revision:

1. If no water is detected and the trailing edge has less than 20,00 hours time-in-service, reinspect in accordance with paragraph (a) at intervals not to exceed 3,500 hours time-in-service.

2. If no water is detected and the trailing edge has 20,000 or more hours time-in-service, reinspect in accordance with paragraph (a) at intervals not to exceed 7,000 hours time-in-service.

3. If water is present and the calculated or measured unbalance is within allowable limits, reinspect in accordance with paragraph (a) at intervals not to exceed 1,100 hours time-in-service.

4. If water is present and the total elevator unbalance cannot be brought within allowable limits, replace the trailing edge panel or panels before further flight.

(b) If the trailing edge is replaced by a trailing edge part number 1580585–103 or –105, within the next 3,500 hours time-in-service inspect in accordance with paragraph (a) and reinspect in accordance with paragraph (a)(1), (a)(2) or (a)(3).

(c) Modification of the elevator trailing edge in accordance with Lockheed Service Bulletin 093–55–027 dated November 20, 1984, or later FAA-approved revision, constitutes terminating action for the repetitive inspections required by paragraphs (a)(1), (a)(2), and (a)(3), above.

(d) Alternative means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base for accomplishment of inspections or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on June 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–15978 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–59–AD]

Airworthiness Directives; McDonnell Douglas Model DC–4, C54–DC, and C54 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspection, rework of the control horn and repair, if necessary, of the elevator trim tab spars on McDonnell Douglas Model DC–4, C54–DC and C54 (Military) series airplanes. This AD is prompted by reports of cracks in the elevator trim tab spar which, if uncorrected, could result in loss of elevator trim tab control in flight.

DATE: Comments must be received no later than August 26, 1985.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–59–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Airframe Section, ANM–172W, FAA, Northwest Mountain Region, Western Aircraft Certification Office; telephone (213) 536–6032. Mailing Address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM–172W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-59-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has received several reports of cracks found in the left- and right-hand elevator trib tab spars at the trim tab control horn attach point during inspections of the McDonnell Douglas Model DC-4, C54-DC, and C54 (Military) series airplanes. A subsequent examination by the manufacturer of a tab with cracks in the spar has led to the conclusion that the cracks were initiated as a result of the edges of the base of the steel tab control horn riding in the top and bottom radius of the tab spar to which it is attached.

According to the manufacturer, if the tab should become free because of a complete failure of the horn or spar, both the elevator and tab would oscillate, with the oscillation magnitude of the elevator significantly less than that of the tab. The potential for severe damage would occur to the tab with subsequent damage to the elevator. In the worst condition, flutter could occur and there would be difficulty with control of the aircraft.

Since this condition is likely to exist or develop on other airplanes of the same type design, this proposed AD would require inspection, rework of the control horn, and repair, if necessary, of the elevator trib tab spars on McDonnell Douglas Model DC-4, C54-DC and C54 (Military) series airplanes.

It is estimated that 110 airplanes of U.S. registry would be affected by this AD, that it would take approximately 15 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this proposed AD on the U.S. fleet is estimated to be $66,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-4 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354 (a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive.

McDonnell Douglas (Douglas Aircraft Company): Applies to all McDonnell Douglas Model DC-4 and C54-DC series and all C54 military models eligible or to be made eligible for civil use, certificated in all categories. Compliance required within 100 flight hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent loss of the elevator trim tab control in flight, accomplish the following:

A. Perfrom a dye penetrant inspection for cracks in the left and right-hand elevator trim tab spars at station 81.5 (approximately), in accordance with the instructions of paragraph D. of this AD. Note that AD 48-06-05 requires, in part, the replacement of an originally designed aluminum control horn, P/N 2114427, with a steel control horn, P/N 2357165.

B. If no cracks are found in the trim tab spar, rework and reinstall the steel control horn (previously identified as P/N 2357165) in accordance with the instructions of paragraph D. of this AD.

C. If cracks are found in the trim tab spar, accomplish prior to further flight: (1) The rework of the control horn in accordance with the instructions of paragraph D. of this AD, and (2) a repair of the cracked spar. McDonnell Douglas Service Rework Drawing J060262 Revision B, dated January 30, 1985, or equivalent approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, describes an acceptable means of repair.

D. Instructions for inspection of spar and rework of control horn:

1. Remove elevator trim tab in accordance with DC-4 Maintenance Manual (M/M) Flight Control Group, paragraph 3.15.1.

2. Remove elevator trim tab control horn, P/N 2357165, from trim tab spar station 81.5 (approximately).

3. Strip top coat and primer from the area of the spar at station 81.5 (approximately) in accordance with normal shop practice.

4. Using dye penetrant procedures, inspect for cracks in the tab spar radius in accordance with normal shop practice.

5. Rework the steel control horn base by chamfering the upper and lower edges to 0.06 ± 0.03 inches $\times$ $45° \pm 5°$ and leave no sharp edges.

6. Protect the worked areas with two applications of zinc chromate primer or equivalent.

7. Reinstall flight control system components in accordance with DC-4 M/M Volume VI, paragraph 3.15, Elevator Trim Tab.

8. Required fastener hardware, their torque values, and torque slippage indication instructions are given in the DC-4 M/M, DC-4 Service Bulletin #83 and AD 51-09-02.

Note 1.—If a DC-4 M/M is not available, the equivalent section of the C-54 M/M may be used.

Note 2.—Repetitive inspections, the attachment fasteners with their torque values, and torque slippage indication requirements of Airworthiness Directives AD 48-06-05 and AD 51-09-02 remain applicable and are not intended to be changed by the requirements of this AD.

E. Prior to issuance of a Certificate of Airworthiness for military aircraft being converted for civil certification, the airplane must be inspected, parts reworked, and if cracks are found, a repair accomplished, in accordance with the requirements of this AD.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

G. Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long

Beach, California 90846, Attention: Director, Publication and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on June 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-15977 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 290

[Docket No. RM85-17-000 (Phase II)]

Regulation of Electricity Sales-for-Resale and Transmission Service

June 28, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing the second phase of a Notice of Inquiry to evaluate its policies toward wholesale electricity transactions and transmission service. This second phase notice explores the Commission's regulation of wholesale electric requirements service. The notice focuses particular attention on the pricing and risk allocation policies towards requirements service. The first phase, issued previously, addresses the Commission's regulation of coordination transactions and transmission service.

The Commission's objective for both phases is to investigate how its policies promote or impede efficiency in electricity markets. The Commission also seeks to determine whether these policies could be changed to further promote efficiency in the electric utility industry.

DATES: Comments must be filed by 4:30 p.m. EDT on September 6, 1985. A public conference will be held on October 16 and 17, 1985. Requests to participate in the conference must be received by September 6, 1985.

ADDRESS: Comments and requests to participate in the conference should refer to Docket No. RM85-17-000 (Phase II) and be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: David E. Mead, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capital St., NE., Washington, D.C. 20426, (202) 357-8024.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) announces the second phase of a broad inquiry into the regulation of electric utilities selling in wholesale markets. This inquiry seeks to explore how the Commission's regulations affect efficiency in electricity markets and how they might be modified to improve efficiency.

Phase I [1] of this inquiry explores possible changes in our regulation of transmission and coordination services, two of the major areas of our electric jurisdiction. Phase II addresses requirements services, a third major area of our jurisdiction.

Efficiency in requirements markets may be affected particularly by our policies regarding pricing and risk allocation. Thus, Phase II seeks comments regarding how our regulation of requirements service, especially as it relates to pricing and risk allocation, affects efficiency and how it might be changed to encourage greater efficiency.

II. Description of Requirements Service

Requirements service is a long-term firm supply of capacity and energy to meet all or part of another utility's load. It is used by buyers as a substitute for acquiring and operating sufficient generation resources to meet their own loads. Buyers then resell the power to end-use customers or to other utilities.

Wholesale requirements service is typically provided at transmission level voltages, which are generally higher than the distribution level voltages characteristic of retail sales. In addition, wholesale suppliers serve a relatively small number of distributor customers, while retail suppliers serve a large number of end-use customers.

Requirements service can be categorized as either full or partial. Full requirements service involves a commitment to meet the total current and projected load of the buyer. Full requirements service may also be sold to serve a utility that owns generation facilities if those facilities are not connected to all of the utility's service territories. Partial requirements service meets only a portion of a distributor's load. Thus, it is provided to distributors that own or have access to some generation but not enough to supply the entire load connected to that generation. This service is usually intended to provide either base load power (where the buyer owns or has access to peaking capacity) or peaking service (where the buyer has base load generation). In some cases, the service is limited by a maximum contract demand.

The long-term and relatively open-ended nature of the commitment to provide firm power makes wholesale requirements service very similar to retail service from the seller's perspective. Because of these characteristics, anticipated requirements sales affect the planning process and influence investment and resource acquisition decisions. The kinds of pricing and risk allocation issues that arise in requirements rate cases at the Commission are similar to those that confront state regulators: rate design, rate of return, cost and load estimation, allocating plant abandonment costs, and rate treatment of construction work in progress (CWIP), to name but a few.

III. Pricing

A. Efficiency and Pricing

The Federal Power Act [2] (FPA) requires us to establish just and reasonable rates. To satisfy this obligation, we have a fundamental obligation to regulate entities under our jurisdiction in a way that promotes the greatest possible degree of economic efficiency. As a federal appeals court has said in *Northern Natural Gas Company* v. *F.P.C.*, 399 F. 2d 953, 959 (D.C. Cir. 1968):

> [T]he basic goal of direct governmental regulation through administrative bodies . . . [is] to achieve the most efficient allocation of resources possible.

To fulfill this obligation, this inquiry seeks to determine how our policies affect economic efficiency in the electric utility industry. By economic efficiency, we mean allocating and using resources in a way that most benefits society.[3] Economic theory suggests that efficiency requires two conditions. First, production and delivery should occur at minimum cost. This is productive efficiency. Second, resources should be allocated where they have the highest value. This is allocative efficiency.[4]

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[1] Regulation of Electricity Sales-for-Resale and Transmission Services (Phase I), 50 FR 23445 (June 4, 1985).

[2] Federal Power Act, section 205 and section 206.

[3] This is the generally accepted definition in economic theory. *See*, for example, Paul Joskow and Richard Schmalensee, *Markets for Power*, The MIT Press, 1983, pp. 79-90; and James M. Griffin and Henry B. Steele, *Energy Economics and Policy*, Academic Press, New York, 1980, pp. 33-62.

[4] Economic efficiency may also be constrasted with other, narrower types of efficiency. For example, energy efficiency is concerned only with minimizing energy use, even at the expense of

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One of the effects of our pricing policies is to apportion risk between utility investors and ratepayers. How risk is apportioned can affect productive efficiency. Risk apportionment is discussed in the next section.

Allocative efficiency is influenced largely by the way in which prices are set. This is because customers base their consumption decisions on the prices they must pay, among other factors. To be efficient resource allocators, prices should signal to customers the economic cost of their purchase decisions. Economic theory suggests that marginal cost is the correct signal. Marginal cost is the cost of producing an additional unit of a good or service.

We are concerned that allocative inefficiencies may result when prices stray from marginal cost. For example, if prices are less than marginal costs, individuals may choose to increase usage even when the resulting benefits are less than the costs of supplying the extra service. Conversely, if prices exceed marginal costs, individuals may choose to reduce usage even when the foregone benefits are greater than the costs avoided by not supplying the increment of electricity.

In a recent case involving Wisconsin Electric Power Company (WEPCO),[5] we accepted WEPCO's proposal to design its rates based on marginal cost pricing principles. The court remanded our order [6] on the grounds of inadequate record support. This inquiry creates a broader forum in which to reexamine marginal cost pricing in comparison with our existing pricing policies.

Congress recognized the importance of reexamining traditional ratemaking methods in enacting the Public Utility Regulatory Policies Act of 1978 (PURPA).[7] Title I of PURPA required state regulatory commissions and non-regulated utilities to consider for potential adoption a number of "federal standards" established in the act.[8] The most far-reaching of these standards is that rates charged to each customer class shall, to the maximum extent practicable, reflect the cost of providing electric service to each such class.[9]

Section 115 defined further this "cost of service" standard. The cost of service method considered shall "to the maximum extent practicable . . . permit identification of differences in cost-incurrence" for each customer class "attributable to daily and seasonal time of use of service" and to "differences in customer demand and energy components of costs." [10] As to the latter, commissions and non-regulated utilities were required "to take into account the extent to which total costs of service are likely to change if additional capacity is added to meet peak demand" and "additional kilowatt-hours of energy" are delivered to customers.[11]

Economic theory suggests that these standards can be met only through rates based upon the marginal cost of service. However, Congress did not specifically make that determination. Rather, Congress left to state commissions and non-regulated utilities the decision as to which costing methodologies provide the most appropriate basis for reflecting these standards in the context of the retail rate designs in each particular state or utility system, and for meeting, in this context, the three broad purposes to Title I of PURPA set forth in section 101, *viz.*, end-user conservation, utility system efficiency and equitable rates.

The "efficiency" purpose is defined in section 101 of PURPA as "the optimization of the efficiency of use of facilities and resources by electric utilities." [12] The conservation purpose reflects the elimination of wasteful use of energy, i.e., that use which entails a commitment of resources valued in excess of the value of the electricity to end-users. Together, the efficiency and conservation purposes of section 101 encompass both the notions of productive efficiency and allocative efficiency described above, the yardsticks against which we suggest our own ratemaking policies and practices should be measures.

PURPA did not require that these "federal standards" be adopted. However, state commissions and non-regulated utilities were required to determine their propriety and to consider their adoption through public evidentiary hearings and to articulate their determinations in writing.[13] Many states, in implementing PURPA, conducted a detailed examination of the basic issues of electricity pricing, including the determination as to the most appropriate costing methodology on which to base rate structures and how that methodology should be applied in the retail ratemaking context.

We were not required by PURPA to conduct a similar examination. However, we believe the time has come for us to conduct a fundamental review of the pricing of requirements service. We recognize that the requirements service area may raise different considerations and that different costing methods may affect the various interests quite differently in this area from in the retail context. However, we believe that the experience of the states in making the initial rate structure or pricing determinations under the Title I process, and in the ongoing process of refining the costing methodology adopted, may yield some valuable insights for our own inquiry. We invite state commissions and others involved in the state PURPA Title I processes to share these insights with us.

It is important to send consumers the right price signals for basic energy commodities. We have already initiated inquiries about this for the natural gas industry [14] and for bulk power coordination and transmission services.[15] We are now prepared to continue the process for wholesale electric requirements service.

B. Current Pricing of Requirements Service

Our regulations permit the development of requirements rates that are either differentiated on a time-of-use basis or are time invariant. Furthermore, a filing utility may base its rate proposal on marginal or incremental cost,[16] fully

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nonenergy cost increases. Engineering efficiency is concerned with the limited goal of minimizing the physical quantities of resources required in a particular production process. See "Energy Accounting vs. the Market", *The Resources for the Future Bulletin*, Resources for the Future, Washington, D.C., October 1975, pp. 4-5; and *The EPRI Journal June/July 1977*, pp. 35-36.

Basing our decisions on economic efficiency considerations is not new to us. For example, in Opinion No. 191, 25 FERC 61,056 (1983), we based our decision regarding whom to award a license to operate and maintain a hydroelectric project on a number of criteria, including economic efficiency. There we noted that " . . . the goal of economic efficiency is enhanced by assigning hydro power to its highest-value use."

[5] *Wisconsin Electric Power Co.*, FERC (1983) Opinion No. 188.

[6] Electricity Consumers Resources Council v. Federal Energy Regulatory Commission *et. al.*, 747 F. 2d 1511 (Nov. 20, 1984).

[7] 16 U.S.C. 2601 *et seq.*

[8] 16 U.S.C. 2621.

[9] 16 U.S.C. 2621(d)(1). Other standards required that time-of-day, seasonal and interruptible rates, and load management techniques, if cost-justified, be offered to each class of customers; and that non cost-based declining block rates be prohibited. *See 16 U.S.C. 2621 (d)(2)–(6) and § 2625.*

[10] 16 U.S.C. 2625(a)

[11] *Id.*

[12] 16 U.S.C. 2611.

[13] 16 U.S.C. 2621(a)–(c).

[14] Interstate Transportation of Gas for Others, 50 FR 114 (Jan 2, 1985); and Natural Gas Pipeline Ratemaking, Risk, and Financial Implications after Partial Decontrol, 50 FR 3801 (Jan. 28, 1985); and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 24,130 (June 7, 1985).

[15] Regulation of Electricity Sales-for-Resale and Transmission Services (Phase I) 50 FR 23,445 (June 4, 1985).

[16] In this Notice, we use the terms marginal cost and incremental cost interchangably. Both terms

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distributed embedded cost, or noncost considerations. Fully distributed costs represent the apportionment of average accounting (or embedded) costs of financing, depreciating, and operating production, transmission and distribution capacity to all requirements customers. Despite this breadth of options, nearly all of the requirements rate approved by us have been based on fully distributed embedded costs, and the large majority of those rates lack any provision for differentiation by time-of-use.

We are concerned that our current ratemaking policies may be sending the wrong signals and hindering efficiency. Our concern stems, in part, from the seeming inconsistency between the pricing of requirements and coordination services. In most of the coordination rate schedules and tariffs on file with us, the price of energy is keyed to some measure of incremental running costs. Considerable evidence [17] seems to suggest that costs vary systematically over time, due to differences in the level of usage over time as well as other factors. With our approval, coordination rate schedules often provide for prices to vary on an hourly basis. Thus, buyers of coordination service see a time variation in cost through the structure of their rates; buyers of requirements service do not. Possibly, there may be a benefit to shielding requirements customers from price signals that show how the cost of producing electricity varies over time. However, rational regulatory policy requires us to weight any such benefit that may exist against the costs that it creates.

We are concerned that the present approach to pricing requirements service may lead to several types of inefficiencies. First, wholesale customers may make inefficient decisions regarding where to acquire bulk power. If a wholesale customer has the flexibility to choose from among more than one source of power, it will likely choose the source that charges the lowest price. But if the prices of the various sources of electricity do not reflect their respective marginal costs, then the customer's choice of supply sources may not be the source that can generate the desired increment most cheaply.

For example, consider a distribution utility that has the flexibility to purchase bulk power from two different sources. The first source is a supplier with whom the distributor has a requirements service agreement. This first supplier generates much of its supply from plants with low variable costs (e.g., nuclear plants with variable cost of 15 mills per kilowatt-hour (kWh)) and the remainder from plants with high variable costs (e.g., gas turbine plants with variable cost of 60 mills per kWh). Assume that its average variable cost (and thus, its energy rate) is 30 mills per kWh. The second source of bulk power is from the coordination market. The second supplier generates all of its power from coal steam plants, whose incremental cost is 25 mills per kWh.[18]

Suppose that the distributor needed to purchase an increment of power during a particular hour and that this hour was during the off-peak for the first supplier. As a result, this supplier could generate the increment from its baseload nuclear plant at an incremental cost of 15 mills per kWh. But the energy rate (based on average costs) for that increment of power would be 30 mills. The second supplier, who enjoys the pricing flexibility accorded to coordination market participants, would be willing to supply the increment of power for any price between 25 mills, its incremental cost, and 30 mills, the price charged by its competitor, the requirements supplier. Thus, the distributor would purchase the increment from the coordination supplier, since that supplier could offer a price lower than the requirements supplier's 30 mill rate.

But the requirements supplier could have produced the increment at a lower cost, since its incremental cost during the hour (15 mills) would have been lower than that of the coordination supplier (25 mills). If the requirements supplier's rates had been based on marginal costs, the distributor might have purchased from the supplier that could have produced the increment of electricity more cheaply. The distributor and its customers would have reaped the benefit of that decision: the price paid by the distributor would have been 15 mills instead of the coordination supplier's price of 25–30 mills. But average cost pricing interfered with the efficient choice and raised the distributor's purchased power costs.

Many requirements customers appear to have at least some choice among alternative sources of bulk power (although some service agreements between requirements suppliers and their customers may impose certain limits on the ability of the customers to swing between alternate supply sources while the service agreement is effective). Some have choices among alternative suppliers, as in the example above. Others can generate power from their own facilities as well as purchase power from requirements suppliers. Available information [19] indicates that slightly more than half of all wholesale requirements sales are to partial requirements customers, who by definition have access to alternate sources of bulk power for at least some portion of their load. Because of this large potential for choice among alternate suppliers, it is important that prices accurately communicate the relevant costs so that customers can make the most efficient choices.

Pricing requirements power at average embedded costs may produce a second inefficiency when requirements customers can sell power in coordination markets. Some requirements customers may be entitled, by virtue of contract demands,[20] to purchase more power than they actually need. They can then resell the power in coordination markets when the market price for coordination power exceeds the average cost energy rate these customers pay.[21] This produces no inefficiencies as long as the requirements supplier's marginal cost of generating the power is less than the decremental cost of the utility that buys from the requirements customer.[22] But inefficiencies may result if the marginal cost of generating the power is greater than the decremental cost of the coordination buyer. In essence,

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refer to similar concepts, namely the additional cost of producing an additional unit of a good or service. However, we are aware that some distinguish between the two terms in relation to the size of the additional unit produced. For example, in *The Economics of Regulations, Vol. I*, John Wiley & Sons, Inc., (New York: 1970), p. 66, Alfred Kahn defines marginal cost as the additional cost of producing an additional infinitesimally small unit of output, while he defines incremental cost as the additional cost of producing an additional finite (and possibly large) unit of output.

[17] *See* J. Robert Malko, Darrell Smith, and Robert Uhler, *Costing for Ratemaking*, Electric Power Research Institute (RDS No. 85), 1981, pp. IV-15 to IV-17.

[18] This example assumes equal access to each supply source and equal transmission costs.

[19] In 1977 (the most recent year for which data are published), wholesale sales to partial requirements customers were 108 billion kWh of electricity while sales to full requirements customers were 100 billion kWh. *See Statistics of Privately Owned Utilities in the United States for the year ended December 31, 1977*, p. 1300.

[20] Contract demand is the maximum amount of electricity that a buyer is entitled to purchase during a given period.

[21] At times, the marginal cost of generating requirements power will be greater than the average cost energy rate and, at other times, it will be less than the rate.

[22] It does, however, shift coordination market profits away from the requirements supplier to the requirements customer.

relatively expensive power would be displacing cheaper power.[33]

In this latter situation, average cost pricing (compared with marginal cost pricing) may benefit some, but it may disadvantage others. The purchaser of the coordination power could benefit from average cost pricing, since it could obtain power at a price cheaper than the purchaser's decremental cost. In addition, the requirments customer could benefit to the extent that it resold the power at a price greater than the price it paid for the power. However, since the incremental cost of generating the power by the requirements supplier exceeded the price received, either the supplier's shareholders took a loss on the sale, or else the supplier's other customers made up the loss through higher rates. (For example, the requirements supplier's fuel adjustment clause might permit the supplier to pass through the unrecovered portion of fuel costs in higher energy rates.)

A third inefficiency may result from the effect of average cost pricing on end use consumption. When the prices paid by a wholesale requirements distributor customer do not reflect the generating supplier's marginal costs, then the prices charged by the distributor to its own retail customers cannot accurately reflect those marginal generation costs. As a result, end users may not make efficient consumption decisions. They may consume too much electricity when marginal costs exceed prices and too little electricity when prices exceed marginal costs.

We are intent on evaluating our present policies toward requirements service and exploring alternatives, particularly marginal cost pricing. Our primary interest in this inquiry is in general issues rather than details. However, to sufficiently evaluate the merits of marginal cost pricing as a general principle, certain major implementation issues must be explored. Nevertheless, we do not think it advisable at this stage to consider questions of detail. If, after this inquiry, we are convinced of the merits of marginal cost pricing as a general principle, then we anticipate one or more follow-up proceedings to address more detailed questions. These questions might include how best to measure marginal costs, how precisely to reflect them in requirements rates, whether marginal cost principles should be applied in all circumstances, and other implementation questions. We have chosen this strategy because we do not want to burden the industry, its customers, and other commenters with detailed implementation questions until we first satisfy ourselves that the marginal cost approach in principle is reasonable and desirable.

C. Alternatives to Current Pricing Methods

1. Timing and Cost Basis of Rates

a. *Time-of-Use and Marginal Cost Principles.* We would like to explore alternatives to our current pricing methods. First, we wish to consider whether to require prices to vary by time-of-use. As discussed earlier, considerable evidence seems to suggest that costs vary systematically over time. For example, when demand is low and only a portion of capacity is needed, utilities usually generate electricity from plants with the lowest variable costs. When additional capacity is needed to supply peak period demands, plants with higher variable costs are also used. Thus, variable costs tend to be lower in off-peak periods than in peak periods. In light of this tendency, we are concerned that non-time-differentiated prices may not convey proper signals to customers.

Second, we wish to consider whether electricity prices should be set based on marginal costs. As explained above, the economic cost of additional consumption is marginal cost. We are concerned that if prices do not reflect marginal costs, individuals may make purchase decisions that produce benefits that are less than costs. As a result, too few or too many resources may be devoted to electricity production and delivery.

In practice, it appears useful to think of marginal costs as having an energy and a capacity component. Marginal energy costs can be defined as the "cost of fuel and variable operating and maintenance expenses incurred in providing an additional kilowatt-hour of electricity." [34] If increments of load are supplied by purchased power, the purchaser's marginal energy cost is usually defined as the cost of the purchased power. Where a utility participates in a centrally dispatched power pool, it appears that the pool's rather than the company's marginal energy cost may be the more appropriate measure.

Marginal capacity cost is the cost of capacity needed to serve an increment of demand. Marginal capacity costs vary depending on a number of factors, such as the level of capacity utilization and the length of the time horizon, as well as other factors. When significant existing capacity is unused, there is no marginal capacity cost to serve an additional increment of demand. The reason is that the costs of installing the existing capacity have already been incurred, and no further capacity costs would result from using otherwise idle capacity. But when capacity is fully utilized and power is unavailable for purchase from other sources, further increases in demand create positive marginal capacity costs. The magnitude of these costs depend on whether the short-run or the long-run is considered, among other things. In the short-run (i.e., in a time frame too short to install additional capacity), an increase in demand cannot be satisfied by increasing supply from existing capacity. Instead, the increase in demand from one customer can only be satisfied by reducing consumption from other customers. The short-run marginal capacity cost incurred to satisfy the increment of demand of the first customer would be a cost of opportunity. That is, it would be the cost imposed on, or the benefits foregone by, the other customers whose opportunity to consume was reduced to satisfy the first customer's demand. These costs are also referred to as shortage costs, since they arise from a shortage of capacity. In the long-run (i.e., in a time frame long enough to install additional capacity), marginal capacity cost is the cost of installing an additional amount of capacity.

A number of issues arise regarding the proper measurement of marginal cost. For example, one issue concerns whether prices should reflect short-run or long-run marginal costs. Another issue concerns whether prices should reflect the costs of a utility's existing mix of generating plants or the costs of a different plant mix, capable of supplying the utility's load at the lowest possible total cost. We wish to explore these issues in our inquiry.

When setting prices, we accept as given that the revenue requirement, i.e., the allowed revenue targeted to be collected by a utility, will be tied to the embedded costs expected to be incurred by the utility. However, if all prices charged by a utility were based on marginal costs, the resulting total revenue expected to be collected from those rates could differ from the total embedded cost revenue requirement. To abide by the embedded cost revenue requirement constraint, at least some adjustments would need to be made to marginal cost prices. A number of

[33] At least one report has concluded that this occurred in Florida. *See* Stanley Besen and Jan Paul Acton, *The Economics of Bulk Power Exchanges*, the Rand Corporation, May 1985, p. 50. This report was prepared under a contract with the Commission and is available from our Division of Public Information.

[34] 18 CFR 290.303(a).

adjustment, or reconciliation, mechanisms have been suggested in other forums.[25] We are interested in exploring what adjustments to marginal cost pricing would create the smallest distortions to efficiency.

A number of criticisms of marginal cost pricing have been raised. Some critics contend that if the prices of related goods differ from marginal costs, then society may not benefit from marginal cost based electricity prices.[26] These critics argue, for example, that electricity competes with other fuels such as oil and gas in many end uses. End users make their choices based on the relative prices of the competing energy sources. If the prices of alternate energy sources do not reflect their respective marginal costs, then pricing electricity according to marginal cost will not necessarily result in efficient choices by end users. Expensive electricity could displace a fuel whose marginal costs were lower because the alternate fuel price was above its marginal cost. Or a fuel with relatively high marginal costs could displace less costly electricity because the price of the alternate fuel was below its marginal cost.

Of course, this line of argument, sometimes called the theory of the second best, does not refute the hypothesis that marginal cost pricing for electricity could result in more efficient purchasing decisions by wholesale electric customers among alternate sources of bulk power, described in Section III. B. above. Nor does it refute the hypothesis that marginal cost pricing could improve efficiency in coordination markets, also discussed in Section III. B. above. But it does speak to the potential efficiency effects of marginal cost pricing in retail markets. This line of reasoning presents a serious argument against marginal cost electricity pricing whenever it can be shown that average embedded cost electricity prices would result in greater efficiency than marginal cost electricity prices as a result of the prices of related goods deviating significantly from their respective marginal costs.

According to another line of criticism, setting wholesale electricity prices based on marginal costs would not increase efficiency if those price signals were not transmitted through to retail rates.[27] This line of argument cannot stand by itself, since the potential efficiencies of marginal cost wholesale pricing relating to better wholesale purchasing decisions and improved coordination transactions [28] do not depend on transmitting signals to retail rates. But the argument does relate to the effect of marginal cost pricing on efficiency in retail markets. It would appear that marginal cost pricing of wholesale rates would not improve efficiency in retail markets if the wholesale price signals were not transmitted through to retail rates. On the other hand, retail rates cannot fully reflect marginal costs unless wholesale rates also reflect marginal costs. For this reason, those responsible for setting retail rates may not be motivated to adopt marginal cost pricing principles if wholesale rates are not based on marginal costs.[29]

A third criticism of marginal cost pricing relates to the so-called "price squeeze" issue. A price squeeze occurs when the wholesale prices of a seller of both wholesale and retail power discriminate against a wholesale customer, resulting in a potential anticompetitive burden on that customer. In past Commission decisions,[30] comparisons of rates of return have generally been used to determine whether price discrimination exists.

A major reason why such price discrimination may arise is that retail and wholesale electricity rates are regulated by different authorities. Retail rates are regulated by the state commissions while we regulate wholesale bulk power rates. Since the different regulatory authorities may use different methods to set retail and wholesale rates, different rates of return for wholesale and retail service may result, and thus a price squeeze could possibly result.

Of particular concern to our present inquiry, rate methodologies could differ if we were to require wholesale rates to be based on marginal costs while certain state commissions base rates on average embedded costs. In such a circumstance, it is theoretically possible that the effective rate of return embodied in the wholesale rate of an integrated utility could exceed the rate of return embodied in the bulk power component of that utility's retail rate. This could be true despite the fact that the marginal cost-based wholesale rate was just and reasonable. Under these circumstances, a price squeeze might exist. The reason is that, because of the comparatively high prices paid by a wholesale customer of the integrated utility, that customer might suffer a competitive disadvantage in selling power to retail customers that is unrelated to its efficiency as a distributor.[31]

Of course, many different methods exist to design rates based on average embedded costs. As a result, our existing pricing policies, which are based on average embedded costs, could also result in price squeeze to the extent that they differ from state commission policies.

In addition, to the extent that marginal cost-based rates increase the price squeeze potential for some customer classes, the potential price squeeze for other customer classes would be reduced. The reason is that the total revenue requirement of a utility under marginal cost rates would continue to be the same embedded cost revenue requirement presently used for average cost rates. As a result, any increases in revenue collections due to increased rates from one or more customer classes would be offset by decreases in rates and revenues from one or more other customer classes.

We do not know at present what would be the net effect or marginal pricing on the potential for price squeeze. Thus, we wish to investigate in this inquiry whether marginal cost pricing of wholesale power would create or exacerbate price squeeze and, if so, how that should influence our decisions regarding marginal cost pricing.

To aid in our evaluation of these issues, we invite comments on the following questions:

1. Do the costs of providing wholesale requirements service vary systematically by time-of-use? If so, is there any reason why we should not establish prices for requirements service that vary by time of use? Are there any benefits from continuing to set prices that do not vary by time-of-use?

2 a. In determining whether to adopt time-of-use marginal cost pricing for wholesale requirements service, should we be concerned if any wholesale customers cannot reflect those time-of-

[25] Electric Utility Rate Design Study, *Costs and Rates Workbook, Part I: Textbook*, September 1981, pp. 9-10 to 9-21.

[26] Electric Utility Rate Design Study, *Rate Design and Load Control: Issues and Directions—A Report to the National Association of Regulatory Utility Commissioners*, November, 1977, pp. 45-46, 143-144, and 152-153.

[27] *See* for example, Brief of the Municipal Intervenors Opposing Exceptions, *Wisconsin Electric Power Company*, Docket No. ER80-567, p. 32 (June 15, 1982).

[28] Discussed in Section III. B. above.

[29] Of course, marginal cost-based wholesale rates would not prevent other rate forms at the retail level.

[30] *See*, e.g., 8 FERC 61,198 (1979), Opinion No. 62.

[31] For a contrary view as to whether price squeeze is a potential problem, *see* Paul L. Joskow, *Mixing Regulatory and Antitrust Policies in the Electric Power Industry: The Price Squeeze and Retail Market Competition*, October, 1983, MIT Energy Laboratory Working Paper (MIT-EL 83-023 WP).

use marginal cost prices in their retail rates? What harm would be done by adopting marginal cost pricing for wholesale requirements sales if those signals were not transmitted through to retail rates and/or if retail customers did not respond to these price signals?

b. What harm would be done by adopting marginal cost pricing if wholesale customers could not or did not respond efficiently to marginal cost-based wholesale rates?

3 a. Would prices based on average embedded costs encourage greater efficiency in wholesale requirements markets than prices based on marginal costs?

b. Do the prices of fuels or other goods (i) that are substitutes to or complements of electricity, or (ii) that are imputs to the production of electricity, significantly differ from their respective marginal costs? If so, would average cost pricing for wholesale electricity encourage greater efficiency than marginal cost pricing when the prices of these related goods are not based on marginal costs?

c. Should we establish wholesale electricity prices based on marginal costs in areas where retail rates are not based on marginal principles?

4. Is it possible that marginal cost pricing could worsen the load factors of some utilities? If so, explain how this result would occur and whether this result would be harmful to the utility or its customers?

5. If wholesale prices were based on marginal costs, would price squeeze situations develop in a significant number of markets? If so, what significance should this have on our decisions regarding whether to require wholesale prices to be based on marginal costs? Should we permit state policies, because of their price squeeze effects, to dictate our implementation of the Federal Power Act?

6. If wholesale requirements prices are based on marginal costs, should these prices be based on short-run or long-run marginal costs? Why?

7 a. Given that the revenue requirement would be based on embedded costs, what adjustments should be made to marginal cost prices so as to cause the least distortion to efficiency and avoid the Federal Power Act proscription against undue discrimination? Explain your answer.

b. Would a pricing system based on average embedded costs encourage greater efficiency in wholesale requirements markets than a pricing system based on marginal costs with such adjustments?

b. *Data Needs.* The data that must accompany electric rate filings are set forth in our regulations.[32] At present, our regulations do not require the submission of accounting or marginal cost data that would allow for the calculation of time-differentiated rates if they are not proposed by the applicant.[33] Therefore, if we require utilities to charge time-differentiated average or marginal cost rates, we will also have to modify our regulations to require filing data showing how electricity costs vary by time-of-production.

The specific kinds of data required to derive marginal cost rates could differ depending on the specific method used to estimate marginal costs. We will not inquire here as to the data needs that are unique to each specific method of estimating marginal costs. That investigation would be more efficiently made later, if and when we decide to investigate the detailed question of specific estimating methods. However, we do wish to explore in this inquiry what data needs are common to all the major specific methods used to estimate marginal cost.

We are sensitive to imposing additional data burdens on electric utilities. In recent years, we have made a concerted effort to reduce the amount of data that utilities must report.[34] However, it is inevitable that new data will be required if time-differentiated electric rates are to be developed and reviewed. Our intention would be to keep these additional data to a minimum. We expect that the net increase will not be burdensome if the new data reduce or eliminate data presently being collected.

To aid us in determining the data needed to implement marginal cost pricing, we request comments on the following questions:

8. Assume that the Commission continues to use embedded or accounting costs to establish an overall revenue requirement, but rate structure will be time-differentiated and based on marginal costs (*i.e.*, TDMC rates).

a. Which of the marginal cost data set developed under Section 133 of PURPA (18 CFR Part 290, Subparts C and Subpart F, section .502) would be useful for developing new rate case filing requirements regardless of the specific method used for measuring marginal costs? What data items could be eliminated? What data items should be added? How frequent and current should these data filings be?

b. Which of the existing data requirements in 18 CFR 35.13 could be eliminated or modified if we adopt TDMC rates?

c. Several state commissions require their jurisdictional utilities to provide marginal cost data in retail rate cases.[35] Could any of these data filing requirements serve as a model for the data that would have to be collected by this Commission? Are the data requirements keyed to a particular marginal cost method or are they suitable (as was intended in 18 CFR Part 290, Subpart C) for several different methods?

d. What load data would be required to develop TDMC rates?

9. Assume that, from an overall revenue requirement based on embedded costs, rates will be designed that are time-differentiated and based on average accounting costs (i.e., TDAC rates).

a. Would the time-differentiated accounting data set developed under Section 133 of PURPA (18 CFR Part 290, Subpart B and Subpart E, Section .501) be useful for developing new rate case filing requirements? What data items could be eliminated? What data items should be added?

b. Which of the existing rate case filing requirements in 18 CFR 35.15 could be eliminated or modified if the Commission adopted TDAC rates?

c. Please identify any state commission data filing requirements for TDAC rates that could serve as a model for this Commission?

d. What load data would be required to develop time-differentiated rates based on accounting costs? Do TDAC rates requre more load data than TDMC rates? Please explain.

2. *Rate Forms and Billing Determinants*

To promote efficiency, prices must of course accurately reflect the relevant costs of providing service. But that is not enough. Promoting efficiency requires that prices satisfy at least two other tests.

First, billing determinants must match the service and period for which the prices were intended to apply. Billing determinants are the units of service (e.g., the kWh of electricity consumption

[32] 18 CFR 35.13.

[33] Time-differentiated accounting and marginal cost data must be provided under the regulations that we developed to comply with section 133 of PURPA, 18 CFR Part 290. At present, about 200 utilities are exempted from these regulations.

[34] *See*, e.g., Order No. 390, 3 FERC Statutes and Regulations, ¶ 30,586 (August 3, 1984); and Order No. 335, 3 FERC Statutes and Regulations ¶ 30,485 (September 27, 1983).

[35] It appears that marginal cost data is required in Arizona, California, Connecticut, the District of Columbia, Idaho, Illinois, Maryland, Nevada, New Mexico, New York, Oregon, Virginia, and Wisconsin.

of the kW of peak demand) for which a customer is billed at the relevant rate. It does no good to calculate the costs that should underlie the prices for one period and then charge that price for purchases in a different period instead of the first period.

Second, customers must see in advance what prices will apply for purchases in each period. Customers cannot make efficient purchasing decisons if they do not know the prices to be charged until after the purchases are made.

We are concerned that our existing policies may not always meet these tests. If not, we wish to explore whether our pricing policies could be improved.

Currently, wholesale requirements power is usually sold under a two-part, demand-energy rate form. Customers pay energy charges based on their total purchases of electricity. The rationale for this has been that energy charges are designed to recover variable costs, and variable costs are incurred whenever electricity is delivered. Customers pay demand charges based on some measure of their peak rate of purchase. The rationale for this has been that demand charges are designed to recover capacity costs, and the total capacity of a system is designed to meet expected peak purchases rather than total purchases.

A customer's total demand bill is equal to the product of a demand rate and some measure of the customer's peak rate of purchase. A number of measures of the peak rate of purchase are currently employed. The most common is the noncoincident peak demand measure. This measure selects the customer's own purchase which does not coincide with when the utility's total deliveries were at their highest rate. Since the time of the customer's purchase peak does not necessarily coincide with the time of the utility's systemwide peak rate delivery, this billing method is named the noncoincident peak method.

We are concerned that this system of billing demand charges may not be transmitting the proper price signals. Under the noncoincident peak billing method, once a demand rate is established, a customer's demand bill is dependent only on its own maximum rate of purchase. Thus, the noncoincident peak billing method encourages a customer to reduce its maximum rate of purchase, whenever that may occur. It provides no direct incentive to reduce its purchases at the time of the supplying utility's system peaks [36] except to customers whose own peaks coincide with the utility's peaks. However, to discourage uneconomical use of capacity and to promote efficiency, prices should signal the systemwide peak periods when capacity is nearly fully utilized. Under the noncoincident peak billing method, billing determinants (*i.e.*, noncoincident purchase peaks) may not match the service and period for which the demand charge was intended to apply (*i.e.*, purchases during the systemwide peaks). Thus, the noncoincident peak billing method may improperly discourage purchases when the utility has spare capacity and yet fail to signal to customers through higher prices when the utility is approaching a capacity constraint.

The use of demand ratchets may create similiar problems. A demand ratchet sets a floor on a customer's demand billing determinant. That floor for any month is a specified percentage of the customer's highest rate of purchase over one or more preceding months. This floor renders the customer's demand charge fixed for purchase levels up to the floor. The customer incurs no extra demand charges for increasing the rate of consumption up to the floor. As a result, at times when capacity is scarce and a customer is purchasing below its floor, the demand ratchet prevents the demand charge mechanism from signaling the existence of scarce capacity to that customer. Put another way, once the floor is set for a period, a customer is given no price signal as to the cost that its demand is imposing upon the utility system at any level below the floor.

A less common billing method is the coincident peak method. Under this method, a customer's total demand bill is the product of the demand rate and the customer's rate of purchase during the utility's systemwise peak rate of delivery. However, the customer does not know when the systemwise peak occurred until after the billing period has ended. Thus, the customer may not know in advance when it should try to economize on its purchases. Moreover, the systemwise peak is defined as the actual maximum rate of delivery during the billing period. However, the actual systemwide maximum rate of delivery may be substantially less than the system's potential capacity to generate and deliver electricity. Thus, even if this "peak" period were known in advance, it might be inefficient for customers to economize on the use of capacity during these "peak" periods if demand is substantially less than system capacity at the time of that "peak."

One possible alternative pricing method would be for the utility to announce, in advance, those time periods when it expects its capacity to be nearly fully utilized. Customers' demand bills would be based on their purchases during these periods.

A second alternative would be to eliminate demand charges. In their place, a time-varying one-part rate could be employed. Customers' bills for a given period could be calculated by multiplying the rate in effect for the period, announced in advance, by the customer's purchases in that period. Rates for periods when signficant spare capacity was expected could be based on only the appropriate variable costs for those periods.[37] (If appropriate, these rates could vary among periods of spare capacity.) Rates for periods when capacity was expected to be nearly fully utilized would be set at a level to recover not only variable costs but also the appropriate level of capacity costs.

Under either of these two methods, customers would be told, in advance, the time periods when the utility's capacity was expected to approach full utilization. And they would be given financial incentives through the pricing system to economize on their purchases during those periods.

In light of this discussion, we request responses to the following questions:

10 a. Should we continue to employ the two-part rate form for wholesale requirements sales? Why?

b. If so, what billing determinants for assessing demand charges to customers would most effectively promote effeciency? (Possible options include, e.g., noncoincident peak demands; coincident peak demands, established at the end of the billing period; and purchases during a period, announced in advance, when the seller's capacity utilization rate is expected to exceed some specified level.) State the reasons for your answer.

c. Do demand ratchets promote efficiency? Why or why not?

[36] In certain circumstances, some customers may have an indirect incentive to reduce their coincident peak purchases. In designing demand rates for each customer class, fixed costs are allocated to each class based on the coincident peak demand of the class. Thus, the efforts to reduce coincident peak consumption by a large customer within a class might perceptibly reduce the demand rate of the entire class, if the customer could know in advance the time of the system peak.

[37] If rates were based on marginal costs and marginal variable costs exceeded average variable costs, then total revenues collected during these periods would recover not only all variable costs, but some capacity costs as well.

d. Alternatively, should we abandon the two-part rate form in favor of time-varying one-part rates? Why or why not? What benefits do two-part rates have over one-part rates?

3. Relationship to the Fuel Adjustment Clause

The prices charged by jurisdictional utilities typically are not changed between general rate filings to reflect cost changes. However, an exception may be made for fuel costs and economic purchased power expenses.[38] Changes in these costs may be used to adjust prices, typically monthly, under our fuel adjustment clause (FAC) regulations.[39]

Our FAC regulations were instituted during the 1970's,[40] at a time when fuel costs were becoming increasingly volatile and unpredictable. One original motivation for the FAC was to significantly reduce the possiblity that utilities could substantially over- or underrecover their costs when fuel costs are volatile. In addition, if fuel costs change frequently and substantially, then requirements rates without an FAC might not accurately communicate current fuel costs.

We are concerned that the existing FACs may be creating inefficiencies in requirements markets. Our concerns relate to the effects of the FAC both on sending accurate and usable price signals to customers and on providing incentives for utilities to minimize their costs. The first concern is addressed in this section. The second concern is discussed more fully in the risk allocation section below.

Currently, under non-time-differentiated rates based on average embedded costs, the monthly fuel adjustment to prices is equal to the change in the overall average fuel costs for the month. A utility typically selects from a number of methods to determine the fuel cost adjustment. Under some methods, the utility estimates the average fuel costs it expects to incur in the current month and adjusts a later month's fuel charge if actual fuel costs are subsequently found to differ from the estimate. Under other methods, the fuel cost component of rates in the current month is equal to the actual average fuel cost incurred in a previous month.

Under the first set of methods, which is presently the more common set of methods, the purchaser does not know at the time of purchase the full cost of purchasing power. Instead, the customer must wait until after the supplier has compared actual fuel costs with revenue collected and has presented the required adjustment to the customer. We are concerned that customers may be unable to make efficient purchasing decisions if they do not know in advance the prices that will apply to their purchases.

Under the second set of methods, historical fuel prices enter into the calculation of current energy rates. However, to promote efficiency, prices should instead communicate contemporaneous costs. We are concerned that these types of FACs may impede communication of accurate price signals.

We also wish to inquire whether the conditions that originally motivated the FAC regulations, i.e., significant fuel cost volatility, continue to exist to a degree sufficient to justify the FAC.

In light of this discussion, we invite comments on the following questions.

11. What conditions, if any, exist a present to justify continuation of a fule adjumstment clause? Explain how a fuel adjustment clause improves efficiency when the cited conditions exist.

12. If any FAC is retained, is there any benefit to allowing suppliers to true-up after the billing period, that is, to adjust customers bills after the end of the billing period to compensate for fuel clause revenue collections that exceeded or fell short of actual fuel costs?

13. For those utilities that base their present fuel adjustment clause on historical costs, are there any reasons why these clauses should not be modified to reflect only estimates of contemporaneous fuel and economic purchased power costs? If so, what are these reasons?

4. Pricing Flexibility

Commission-approved rates for requirements service are generally fixed. They are not merely rate ceilings or floors. Thus, utilities may not charge rates that are different from those that are approved by us.[41] Obtaining our approval to change rates is time consuming. Currently, new rates generally become effective only after a period between sixty-one days and seven or more months has elapsed after filing. This delay reduces the seller's flexibility to respond to changing market conditions. As a result, potentially beneficial purchases and sales may not occur.

For example, consider the situation of the distributor described in Section III. B. above. In that example, the requirements supplier was capable of supplying the power at a lower incremental cost than the coordination supplier. However, the comparatively high fixed energy rate charged by the requirements supplier caused the distributor to purchase the power from the coordination supplier. But the distributor might have purchased the increment of power from the requirements supplier if that supplier had been allowed the flexibility to lower its energy rate below the 25 mill incremental cost of the coordination supplier. Such flexibility could have benefitted both the distributor and the requirements supplier: The distributor could have obtained cheaper power, and the requirements supplier could have made the sale at a price above its incremental costs. In sum, overall economic efficiency would have increased.

Such flexibility could be beneficial even if rates were designed based on marginal costs, for the following reason. Even if rates were time-differentiated and based on marginal costs, the structure of rates would of necessity apply, at a minimum, for a number of months. During that interval, actual marginal costs in certain subperiods could frequently differ from the rate levels established.

For example, consider a hypothetical utility that adopted a time-differentiated rate structure based on marginal costs. Assume that this rate structure included a relatively high energy rate for consumption during weekdays between 8 a.m. and 8 p.m. (the peak period) and a relatively low energy rate for consumption during all other times (the off-peak period). Actual marginal costs for most utilities frequently vary on an hourly basis or even more frequently. Thus, actual marginal costs for the utility in this example could be lower than the peak period energy rate during certain hours of the peak period and higher than the energy rate during other hours, especially if the rate remains in effect for many months. Allowing rate flexibility, especially downward flexibility, could encourage economically beneficial sales that might not otherwise transpire.

One way to increase pricing flexibility would be to establish price zones. Then any price within that zone charged by

[38] Economic power is defined as power or energy purchased over a period of twelve months or less where the total cost of the purchase is less than the buyer's total avoided variable cost. *See* 18 CFR 35.14(a)(11)(i).

[39] 18 CFR 35.14.

[40] Order No. 517, *Order Amending §35.14 of the Regulations under the Federal Power Act*, 52 FPC 1304 (1974).

[41] Of course, fixed energy rates can be adjusted for changes in fuel costs or certain purchased power costs under our fuel cost adjustment regulations. *See* 18 CFR 35.14.

the seller would be deemed just and reasonable. Prices could be quickly changed within prescribed limits without additional filings.

To aid us in our investigation of this matter, we request responses to the following questions:

14. Should we allow flexible prices within a pre-approved zone? Why or why not? If so, how should the boundaries of that zone be determined? Should we establish only price ceilings and permit any price below the ceiling to be charged?

15a. How would efficiency be affected by requiring the seller to charge the same price within the zone, or below the ceiling, to all customers within a customer class at any given time?

b. Suppose that a utility were allowed to offer different prices to different customers within a customer class at any given time. Would any customers be harmed by this policy as long as any revenue shortfall resulting from differing prices being charged below the Commission-approved ceiling came entirely at the expense of the utility?

5. Recovery of Capital Costs Over Time

In both regulated and unregulated industries, the total cost of plant is not recovered in any single year. Instead, it is recovered over a number of years. In unregulated industries, recovery of plant costs through prices varies over time with market conditions. But under our existing ratemaking practices, the total cost of plant installed to serve wholesale requirements customers is allocated and recovered in rates over time according to a relatively fixed formula.

Specifically, the capital costs allocated under our regulations to any given year can be subdivided into three general components: return of capital (depreciation expense), return on capital (rate of return multiplied by net invested capital), and taxes. Generally, the depreciation expense component in each year is obtained using the straight line method, that is, by dividing the total original cost of an investment by its expected useful life. The return on capital component for any given year is calculated by applying a rate of return to the net invested capital or rate base, which includes the depreciated original cost of investment. The depreciation expense for a given investment tends to be relatively constant over time. But the net depreciated original cost of that investment declines over time as accumulated depreciation increases. Thus, the return on capital component for a given investment tends to decline over time. As a result, the proportion of the total capital cost of a given investment recovered in any year from customers tends to decline continuously over time. Moreover, this pattern of capital cost recovery is completely insensitive to economic conditions, such as excess capacity.

Economic theory suggests that investors can expect to recover the costs of economic investment over the life of the investment. But economic theory suggests nothing *a priori* about the time pattern of that cost recovery. It certainly does not suggest that capital costs in efficient markets must be recovered in the fixed fashion currently used to set electric utility revenue requirements. To the contrary, recovery of capital costs in unregulated competitive markets varies with market conditions. When demand is relatively low, such as during recessions, efficient markets recover relatively small amounts of capital costs. By contrast, capital cost recovery increases substantially when demand is high relative to capacity.

We wish to explore whether we should permit more flexibility regarding the recovery of capital costs over time. For example, in setting the annual revenue requirement, we could allow flexibility to utilities in calculating depreciation expense, rather than requiring adherence to the straight line method. The proportion of total lifetime depreciation allowed in setting any particular annual revenue requirement might be based on expectations of market conditions during the period that the rates would be in effect, and therefore, on the expected relationship between load and capacity.

To aid us in our inquiry of this issue, we request responses to the following questions:

16 a. What benefit would result if we allowed more flexibility in the timing of capital cost recovery? If flexibility is desirable, how should this be accomplished?

b. What benefits, if any, would result from limiting the frequency with which utilities could change the amount of capital costs recovered in rates?

c. Suppose that utilities were permitted flexibility in recovering capital costs between rate filings. What benefits, if any, would result from allowing utilities to bank any unrecovered capital costs for future recovery?

17. What benefits would result from continuing the current fixed method of recovering capital costs over time?

IV. Risk Allocation

A. Importance of Regulatory Allocation of Risk

Much of the previous discussion in this Notice has addressed ways to encourage greater allocative efficiency, especially through changes in our pricing policies. However, we also seek ways to encourage greater productive efficiency.

Economic theory and common sense both suggest that risk allocation can affect the incentives to minimize costs. A firm is more likely to work to minimize its cost if its financial health is at stake. It is generally accepted that the potential for profit and the fear of financial loss create strong incentives for unregulated firms to hold down costs. Thus, firms that bear significant business risk are more likely to produce efficiently than those are sheltered from this risk.

In unregulated competitive sectors of the economy, business risk initially lies with the investors of the selling firm. Any shifting of business risk to the seller's customers occurs by mutual voluntary agreement and, presumably, takes place because the buyer is better able to carry out activities that minimze costs or is able to bear risk more cheaply. By contrast, in areas under our jurisdiction, regulatory policies largely determine the allocation of risk between the buyers and sellers.

To illustrate this distinction, consider an unregulated firm that begins construction on a project that appears to be an economic investment, based on the best information available when construction begins. But suppose that subsequent events render the investment uneconomic prior to completion and further construction ceases. The costs of the partially completed project would be borne by the firm, unless some prior voluntary agreement with an outside party (for example, an insurance company or a customer) specified that the outside party would bear some or all of those costs.

By contrast, suppose a regulated utility under our jurisdiction abandoned a partially completed project that appeared prudent at the beginning of construction. Much of the costs of this abandoned project would be borne by the utility's customers. This arrangement would occur despite the lack of any prior voluntary agreement by customers to bear these costs. We are concerned that such involuntary shifting of risk may reduce firms' incentives to invest and operate efficiently. However, we also wish to consider whether this

concern should be balanced against the regulatory obligation to serve and the unique risks that this obligation may impose on regulated firms. We wish to explore when the public interest would be served by requiring any party to bear more risk than it would accept voluntarily.

One goal of economic regulation has been to induce monopolies to behave more like competitive firms. In practice, however, regulation generally has shifted some risk from regulated firms to customers. Past Commission opinions [42] dealing with a number of issues, such as fuel cost adjustment clauses, rate design, and plant abandonment, have either explicitly or implicitly made judgements about how risk should be shared between jurisdictional utilities and customers, as well as among different customer classes.

We wish to explore whether the current allocation of risk is dulling incentives to reduce costs. If our policies affecting risk have impeded efficiency, we seek to determine whether we should alter those policies.

To aid in this investigation, we request comments on the following questions:

18 a. Does the present allocation of risk reduce incentives for jurisdictional utilities to operate efficiently? Why or why not?

b. Does shifting risk to customers reduce a jurisdictional utility's incentives to minimize costs and/or transmit proper price signals? If not, why not?

c. How is the public interest served by the traditional allocation of risk between sellers and buyers of requirements service?

19. In general terms, when is the public interest served by allocating any business risk away from jurisdictional utilities and onto customers? What are the important factors that bear on this allocation of risk? How, if at all, should the obligation to serve affect the allocation of risk? Do customers ever have greater opportunities for risk diversification than their supplying utilities (e.g., through greater diversification of investments)? If so, how should this factor enter into the generals questions or risk allocation?

20. Does the current existence of capacity in excess of peak demands arise, partly or wholly, from the past allocation of risk?

21. Could a regulatory system be developed that allows the allocation of risk to be determined through mutual agreement of jurisdictional utilities and customers? For example, would the public interest be served if all business risk were initially allocated to sellers but any voluntary agreement by a customer to bear some of that risk were accepted by us? How would such a regulatory system produce more efficient behavior?

B. Specific Regulatory Policies Affecting Risk Sharing

A number of our current policies affect how risk is shared between jurisdictional utilities and customers and may thereby affect the incentives for efficient resource use. We are concerned that many of these policies may not hold utilities fully accountable for the consequences of their decisions. For example, under our existing pricing practices, demand rates ordinarily are designed to recover the full cost of capacity, regardless of the level of expected capacity utilization. This is accomplished in the design of the demand rate by spreading total capacity costs over expected peak purchases. If peak purchases subsequently decline, utilities can request an increase in the demand rate to recover capacity costs over a smaller level of expected peak purchases. This policy appears to shift much of the cost of capacity underutilization onto customers. We are concerned that this policy may blunt incentives for utilities to make efficient investment decisions. We are also concerned that it may reduce incentives for utilities to hold down their capital and operating costs, and hence their prices, in order to increase capacity utilization.

In addition, this policy may send price signals that impede allocative efficiency. Under this policy, demand rates are high, thereby possibly improperly discouraging capacity use, when capacity is idle. Yet when capacity is scarce, demand rates are low, thereby possibly improperly encouraging capacity use.

We would like to explore these concerns more fully. We also would like to explore alternatives to this policy. One alternative might be to design the demand rate based on some fixed target capacity utilization rate, with appropriate consideration for adequate reserve margins. Under this alternative, the demand rate might be calculated by spreading the total costs recoverable in the demand charge over a kW level equal to some fixed target level of capacity utilization. This capacity utilization rate would not change over time. Thus, if a utility's actual capacity utilization rate was less than the target, the utility would underrecover allowed costs. But the utility would not be allowed to request higher demand rates in a subsequent rate filing based on the lower actual utilization rate. Conversely, the utility could overrecover allowed costs if the actual utilization rate exceeded the target. But the demand rate would not be lowered in a subsequent rate case to reflect the higher actual utilization rate.

This alternative would tend to increase the incentives for utilities to make efficient investment decisions and to take steps to increase capacity utilization. This alternative, by itself, would also tend to levelize the demand rate over time. As a result, the alternative demand rate would tend to be lower than the existing rates when capacity was idle. This would tend to encourage use of idle capacity. In addition, the alternative demand rate would tend to be higher than the existing rate when capacity was fully utilized. This would tend to discourage uneconomic demand for scarce capacity.

If utilities were also granted flexibility in recovering capital costs over time (discussed in Section III, c.5., above), additional benefits might result. Specifically, during periods when a utility expected its capacity utilization rate to be below the target, it would expect to underrecover its allowed costs. To minimize the underrecovery, it would have an incentive to include a relatively small amount of capital costs in its cost of service for these periods. This would tend to lower the demand rate, thereby encouraging greater use of otherwise idle capacity.

Conversely, during periods when capacity utilization was expected to exceed the target, the utility would expect to overrecover its allowed costs. To take full advantage of this opportunity, the utility would have an incentive to include a relatively large amount of capital costs in its costs of service. This would tend to increase the demand rate, thereby discouraging uneconomic demand for scarce capacity.

In summary, this alternative, combined with flexibility in capital cost recovery over time, might tend to make demand rates more responsive to market conditions. Demand rates would tend to be lower when demand was low and higher when demand was high than under our current pricing policies.

Our plant abandonment policies may also affect risk allocations, as we alluded in the previous section. In contrast to competitive firms, which bear the full consequences of their

[42] *See, e.g.* Order No. 517, 52 FPC 1304 (1974); Order No. 352, 25 FERC 61,378 (1983); *New England Power Co.*, Opinion No. 49, 8 FERC 61,054 (1974); and *Northern States Power Co.*, 17 FERC 61,196 (1981).

operating and investment decisions, jurisdictional utilities are allowed under present policies to recover the return of capital through amortization when a plant under construction is abandoned, as long as the costs are deemed prudently incurred. This policy causes the risk of such failures to be shared by customers and investors. The more rapidly these costs are amortized, the larger is the portion of risk borne by the customers. We are concerned that as customers bear a significantly greater amount of the risk, then incentives may be reduced for jurisdictional utilities to avoid embarking upon questionable construction projects or to stop work on partially constructed ones after their economic value has become unclear. Policies that do not hold utilities fully accountable for the consequences of their decisions may also reduce incentives to minimize construction costs.

Risk may also be shifted to customers through the use of fuel adjustment clauses. The automatic adjustment for fuel costs shifts the risk of higher fuel costs into customers, especially those customers who cannot switch to alternative energy sources. We are concerned that it may also decrease the incentive for the jurisdictional utility to search for the lowest cost fuel, since fuel cost decreases must be passed on to customers.

To aid in our evaluation of these policies, we request comment on the following questions:

22 a. Should demand rates continue to be designed based on expected peak purchases, even when expected peak purchases are significantly less than capacity? Why?

b. Alternatively, should demand rates be designed based on a target capacity utilization rate that would not vary with actual peak period capacity utilization? If so, how should that target capacity utilization rate be determined? If not, what harmful effects would result from this policy? What effect would allowing flexibility in recovering capital costs over time have on the desirability of using target capacity utilization rates to design demand rates?

23 a. What policy regarding the distribution of the costs of abandoned plants between utilities and customers would most encourage efficienty? Why?

b. Would this policy depend on whether the plant is jointly owned by more than one utility? If so, how?

c. What factors, other than economic efficiency, should be used to determine how abandoned plant costs should be distributed between utilities and customers?

d. Even if the decision to begin construction was prudent and the abandonment decision was timely, how would the public interest be served if we continued to allow these costs to be amortized and recovered from ratepayers?

e. Assuming the public interest is served, what factors should be considered to determine the proper amortization period?

24 a. If some of the risk of increased fuel costs were shifted onto the jurisdictional utility (e.g., by fixing the entire energy rates (including the fuel portion) between general rate filings), would this alternative policy encourage the minimization of fuel costs?

b. What benefits would result from continuing to allow automatic rate adjustments for changes in fuel costs?

c. Are there alternative policies regarding the recovery of fuel costs that would better encourage the minimization of fuel and other costs? If so, what are they, and how would they encourage cost minimization?

V. Request for Public Comments

A. Procedure for Filing Written Comments

We invite all interested persons to submit written comments, data, views or arguments on issues raised in this Notice. While we desire comments on the specific questions posed in this Notice, we also encourage parties to comment on any aspect of the issues raised in the discussion. Commenters should not feel obligated to respond to every question. Responses can be limited to the questions that address the commenters' principal concerns. To the extent that several groups of individuals may have similar interests, they are encouraged to file joint comments.

To facilitate our comment analysis and preparation for the public conference, we urge commenters to provide a 3–5 page executive summary of their positions on the issues raised. Additionally, commenters should double space their comments, provide a concise description identifying themselves, use the same numbering system as our inquiry when answering questions, and indicate by "N/A" when they have not answered a question.

All comments must be received by us prior to 4:30 p.m. EDT on September 6, 1985. Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should reference Docket No. RM85–17–000 (Phase II). An original and 14 copies should be filed.

All comments will be placed in the public file that has been established in this docket and that is available for public inspection in the Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. during regular business hours. Copies of comments will be available for purchase.

B. Public Conference

A public conference to discuss the issues in Phase II will be convened at 10.00 a.m. on October 16 and 17, 1985 in Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol St., NW., Washington, D.C. 20426. The Phase II public conference will not be of a judicial or evidentiary nature. Persons requesting to speak will be divided into participant panels and will be permitted time to present prepared remarks. There will be no cross examination of persons presenting statements. However, Commissioners may question these persons. In addition, anyone may submit to the presiding officer questions to be asked of persons on the participant panels. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the conference. Transcripts of the conference will be available in the public file for this proceeding, Docket No. RM85–17–000 (Phase II) in our Office of Public Information, and may be ordered from that office.

Requests to participate in the conference should be submitted in writing on or before September 6, 1985 to the Office of the Secretary, and they should state the amount of time required for the oral presentation. These requests must be filed separately from any comments filed in this proceeding. Persons participating at the conference should bring 50 copies of their statements to the conference. A list of the participants in the conference will be available in our Office of Public Information and at the hearing room on the morning the conference is convened.

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 290

Electric utilities, Penalties, Reporting and recordkeeping requirements, Uniform system of accounts.

By director of the Commission.
Lois D. Cashell,
Acting Secretary.
[FR Doc. 85-16057 Filed 7-3-85; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors and Disability Insurance; Supplemental Security Income for the Aged, Blind and Disabled; Cost-of-Living Increases; Delayed Retirement Credits; and Maximum Family Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: In these proposed regulations, we explain that cost-of-living increases in Old-Age, Survivors, and Disability Insurance (OASDI) benefits are no longer necessarily based solely on price increases. Now, we must also consider wage increases if the balance in the Social Security Trust Funds falls below a certain level. However, cost-of-living increases in Supplemental Security Income (SSI) benefits will continue to be based solely on the Consumer Price Index (CPI) increase percentage. The period for measuring these increases and their effective date are also changed.

We also explain how old-age insurance benefits and some survivor benefits are increased because of credit to the insured worker for delayed retirement, and how we are modifying the computation of maximum benefits payable to a family where one or more children are entitled based on the earnings of more than one worker.

These rules are based on sections 111, 112, 114, 201, 331, and 401 of Pub. L. 98-21 (the Social Security Amendments of 1983), as amended by section 2661(k) of Pub. L. 98-369 (the Deficit Reduction Act of 1984).

DATE: Comments must be submitted on or before September 3, 1985.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6785.

SUPPLEMENTARY INFORMATION:

Cost-of-Living Increases

Since 1975, beneficiaries under the Old-Age, Survivors, and Disability Insurance (OASDI) programs have been entitled to cost-of-living increases in their monthly benefits for June (payable in July) of each year because prices increased by at least 3.0 percent over those of the previous year. When OASDI benefits were increased, benefits under the Supplemental Security Income (SSI) program were increased by the same percentage, effective in July. The basis for these increases has been the Consumer Price Index (CPI) for urban wage earners and clerical workers, as published by the Department of Labor, for the first calendar quarter of each year.

Recently, the National Commission on Social Security Reform and the Congress realized that the expected deficits in the Social Security Trust Funds would be caused in part by the fact that price increases, as measured by the CPI, exceeded wage increases in recent years. Thus, cost-of-living increases in benefits based on the CPI drew more from the Trust Funds than was put in the Funds by payroll taxes on wage increases. Congress dealt in part with the expected deficits by changing the method and the time for computing cost-of-living increases. These provisions are included in sections 111 and 112 of the Social Security Amendments of 1983 (the Amendments).

As one way of dealing with the expected deficits in the Trust Funds, Congress provided in section 111 of the Amendments that the OASDI cost-of-living increase for 1983 must be deferred from June until December (payable in the January check) and that increases in future years will also be effective in December. We explain this in proposed revisions to §§ 404.270 and 404.271. Additionally, the SSI increase, which is based on the OASDI increase, was deferred until January 1984 (payable on December 30, 1983) and will be effective in January in future years.

As required by the Social Security Act (the Act), we published notice of the cost-of-living increases by publishing in the **Federal Register** on June 13, 1983, a 3.5 percent increase for December 1983 for OASDI benefits and for January 1984 for SSI benefits (48 FR 27150). In that notice, we also published increased SSI benefit amounts effective with July 1983, as provided for in section 401 of the Amendments. Those increased SSI amounts were further increased by the cost-of-living increase in January 1984. Then on October 31, 1984, we published a notice of a cost-of-living increase of 3.5 percent for December 1984 for OASDI benefits and for January 1985 for SSI benefits (49 FR 43775).

Another significant step for dealing with the expected deficits is a revised method of computing the cost-of-living increase for OASDI benefits, as provided in section 112 of the Amendments. We explain this revised method in the proposed changes to §§ 404.272-404.275.

When the OASDI fund ratio is 15.0 percent or more in any year from 1984 through 1988 and 20.0 percent or more in any year after 1988, we will determine whether there will be a cost-of-living increase for December of that year and the amount of any increase by using the CPI as we have done since 1975, except that we will use the third quarter figures instead of the first quarter. For years after 1984, the OASDI fund ratio is the ratio of the assets in the OASDI Trust Funds on January 1 of a given year to the estimated expenditures from the Funds in the same year. For 1984 only, we will use the estimated assets in the OASDI Trust Funds on December 31, 1984 (this is discussed further in another notice). In each year, the ratio will be rounded to the nearest 0.1 percent. Although not explicitly provided in the Act, we believe that this is what Congress intended because the Act states the 15.0 and 20.0 threshold ratios with one-decimal accuracy.

When the OASDI fund ratio is less than the specified percent for a given year, we will determine whether there will be a benefit increase for that year and the amount of any increase by using the smaller of the increase in prices for one year to the next as measured by the CPI or the increase in wages as measured by the average wage index (AWI). The AWI is the average of the annual total wages of all workers that we use for computing primary insurance amounts for insured workers, as explained in Subpart C of Part 404 of these Regulations.

Note.—In Pub L. 98-604, Congress waived the requirement that the increase in the appropriate index (CPI or AWI) must be at least 3.0 percent in order for a cost-of-living increase in OASDI or SSI benefits to occur. Since the waiver applies only to cost-of-living increases payable in January 1985, the waiver

is not discussed in the proposed revisions to the regulations. In fact, the January 1985 increase is 3.5 percent, as published in the **Federal Register** on October 31, 1984 (49 FR 43775).

Congress further decided that beneficiaries who must accept smaller increases when the OASDI fund ratio is low should, after the ratio exceeds a certain level, have their benefits increased to the level the benefits would have reached if all increases had been based on increases in the CPI. Therefore, there is a "catch-up" provision, which we explain in the proposed § 404.278, so that when the OASDI fund ratio exceeds 32.0 percent, an additional cost-of-living increase can be paid. However, the additional increase will be paid only to the extent that it would not result in the OASDI fund ratio for the year after the year in which the increase is effective being reduced to less than 32.0 percent and only to the extent it is needed to bring the benefits up to the level they would have reached if they had been increased based on the CPI.

As provided in the Amendments and modified by the Deficit Reduction Act of 1984, we will compute the additional increase based on the differences between the compounded percentage benefit increases for the cost-of-living increases that were paid based on the AWI and the compounded percentage benefit increases that would have been paid based on the CPI if the OASDI fund ratio had not been below a specified percentage.

In proposed revisions to § 416.405, we are updating the rule on how we compute the cost-of-living increase for SSI benefits. We explain that, as provided in section 401 of the Amendments, the SSI benefits will continue to be increased by the same percentage by which title II benefits are being incresed based on the CPI, or would be increased if the CPI had been the basis for the Title II increase. Also, in § 416.405, we are deleting an erroneous reference to § 416.414. Further, we are updating the benefit amounts in §§ 416.410, 416.412, and 416.413.

Delayed Retirement Credit

We are introducing into Subpart D of Part 404 rules on the delayed retirement credit. We removed similar rules from Subpart C when it was recodified in 1982 (47 FR 30731, July 15, 1982). We are now rewriting those former rules to make them easier to understand, and we are also adding provisions relating to section 114 of the 1983 Amendments which increase the amount of the credit.

The delayed retirement credit is basically a percentage increase in the benefit amount of a worker who does not receive old-age insurance benefits in one or more months after the month in which he or she reaches retirement age, either because he or she continued to work or simply did not apply for benefits. (65 is the current retirement age but it will gradually increase in the next century to 67.) Any credit earned by the worker also extends to benefits for the worker's surviving spouse or surviving divorced spouse.

The Act states that the amount of the delayed retirement credit as a percentage increase in benefits is based on the year when the worker becomes eligible for old-age insurance benefits. The age of eligibility is 62. However, in these regulatons, we discuss the credit in terms of a percentage increase when the worker reaches age 65 because that is the current retirement age at which the worker begins to earn the credit.

Before the 1983 Amendments, the credit was one-fourth of one percent of the worker's monthly benefit amount times the number of months beginning with the month of reaching age 65 and ending with the month before reaching age 72 for which the worker was fully insured but did not receive benefits. This rate was applicable to workers who reach age 65 at any time after 1981. Section 114 of the Amendments provides in effect that for persons who attain age 65 in 1990 or later, the one-fourth of one percent rate will be increased by one-twenty-fourth of one percent in each even year until the rate reaches two-thirds of one percent for persons reaching age 66 in 2009 and later. The Amendments also lower from 72 to 70 the age at which the credits can no longer be earned. This lower age applies effective January 1984. This change in the age limit is consistent with the lowering to 70 the age at which deductions for earnings are no longer applicable to working beneficiaries.

Child's Benefit Amounts

We are rewording and clarifying the rules in §§ 404.353 and 404.407 to provide that a child entitled to benefits on the earnings record of more than one worker may receive a benefit based on the record with a smaller primary insurance amount if that record yields the highest benefit for the child and if paying the child on that record does not adversely affect other beneficiaries. These changes will make the rules read consistent with section 202(k)(2)(A) of the Act and with the way we have been implementing this provision of law.

Section 202(k)(2)(A) of the Act requires, as a general rule, that we pay the simultaneously entitled child on the earnings record which yields the highest primary insurance amount. However, if paying this child on a record with a lower primary insurance amount results in a higher benefit amount for the child and will not adversely affect the benefit amount of any other person on any earnings record on which the simultaneously entitled child is entitled, then we must pay the child on the record which yields the lower primary insurance amount. The persons entitled on the earnings record on which the simultaneously entitled child will not be paid will be paid as though that child is not entitled on that record.

The current language of §§ 404.353 and 404.407 focuses only on the adverse effects on other beneficiaries being paid on the record with the lower primary insurance amount. Thus, the current rules do not reflect our current interpretation of the Act. Under our interpretation of the Act, we consider the other beneficiaries entitled on any earnings records. Thus, if the individual benefit being paid to the other beneficiary (or beneficiaries) would not be reduced, the child is paid on the record with the lower primary insurance amount.

Maximum Family Benefits

The Act provides that when a child is entitled to benefits on more than one worker's record, the maximum family benefit amounts payable on each record are combined. Under the Act as in effect before the 1983 Amendments, the total payable was the smaller of the sum of the maximums on each record or 1.75 times the highest primary insurance amount possible under the average indexed monthly earnings method (see § 404.210) based on the contribution and benefit base (which we publish each year) for each year for which the combined maximum benefits are payable. This meant that a new primary insurance amount (and thus a new maximum family benefit amount) had to be computed each January for that year for certain beneficiaries.

The new primary insurance amount was based on wage increases as reflected in the contribution and benefit base, and did not consider price increases which were the basis for the cost-of-living increase in the previous year. Therefore, if wage increases were greater or lesser than price increases, the new primary insurance amount was greater or lesser than the former primary insurance amount which had been increased by the percentage of the most recent cost-of-living increase. The effect on the maximum family benefit amount,

after multiplying the new primary insurance amount by 1.75, was a decrease for current beneficiaries when wages did not rise as much as prices, and thus a decrease in benefit amounts. Conversely, there was a windfall increase in benefits when wages rose faster than prices.

To eliminate these inequitable fluctuations in maximum family benefit amounts, the 1983 Amendments provide in section 331 that the maximum family benefit amount is the smaller of the sum of the maximums or 1.75 times the highest primary insurance amount possible for January 1983 (or if later, January of the year a child becomes entitled on more than one record) based on one-twelfth of the contribution and benefit base for that year. Thereafter, that primary insurance amount and the resulting maximum family benefit amount after multiplying the primary insurance amount by 1.75 will be increased only on the basis of cost-of-living increases, instead of on changes in the contribution and benefit base. We explain this provision in the proposed addition of paragraph (f) § 404.403.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under E.O. 12291. The provisions for shifting the cost-of-living adjustment from June to December (July to January for SSI) are expected to reduce OASDI program expenditures by almost more than $27 billion and SSI by about $640 million for the fiscal years 1984–1988. Although this rule technically qualifies as a major rule under terms of Executive Order 12291, these provisions are required by Pub. L. 98–21 and since HHS has no discretion in implementing them, the Office of Management and Budget has granted a waiver from the requirement to conduct a regulatory impact analysis.

Paperwork Reduction Act

The proposed regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance, 13.803 Social Security—Retirement Insurance, 13.805 Social Security—Survivors Insurance, 13.807 Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors, and disability insurance.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: December 27, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: February 27, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subparts C, D, and E of Part 404 and Subpart D of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart C of Part 404 continues to read as follows:

Authority: Secs. 205, 215, and 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended; 64 Stat. 506, as amended; 49 Stat. 647; 42 U.S.C. 405, 415, and 1302.

2. The authority citation for Subpart D of Part 404 continues to read as follows:

Authority: Secs. 202, 205, 216, 223, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 70 Stat. 815, 80 Stat. 67, 49 Stat. 647; sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 428, and 1302; and 5 U.S.C. Appendix.

3. The authority citation for Subpart E of Part 404 continues to read as follows:

Authority: Secs. 205, 207, and 1102, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 405, 427, 1302, unless otherwise noted.

§ 404.270 [Amended]

4. Section 404.270 is amended by changing "June" to "December" in the first sentence.

§ 404.271 [Amended]

5. Section 404.271 is amended by changing the cross-reference in paragraph (a) to § 404.380 and by changing "June" to "December" in paragraph (c).

6. Section 404.272 is revised to read as follows:

§ 404.272 Indexes we use to measure the rise in the cost-of-living.

(a) *The bases.* To measure increases in the cost of living for annual automatic increase purposes, we use either:

(1) The revised Consumer Price Index (CPI) for urban wage earners and clerical workers as published by the Department of Labor, or

(2) The average wage index (AWI), which is the average of the annual total wages that we use to index (i.e., update) a worker's past earnings when we compute his or her primary insurance amount (§ 404.211(c)).

(b) *Effect of the OASDI fund ratio.* Which of these indexes we use to measure increases in the cost-of-living depends on the Old-Age, Survivors, and Disability Insurance (OASDI) fund ratio.

(c) *OASDI fund ratio for years after 1984.* For purposes of cost-of-living increases, the OASDI fund ratio of the combined assets in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (see section 201 of the Social Security Act) on January 1 of a given year, to the estimated expenditures from the Funds in the same year. The January 1 balance consists of the assets (i.e., government bonds and cash) in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, plus Federal Insurance Contributions Act (FICA) and Self-Employment Contributions Act (SECA) taxes transferred to these trust funds on January 1 of the given year, minus the outstanding amounts (principal and interest) owed to the Federal Hospital Insurance Trust Fund as a result of interfund loans. Estimated expenditures are amounts we expect of interfund loans. Estimated expenditures are amounts we expect to pay from the Old-Age and Survivors Insurance and the Disability Insurance Trust Funds during the year, including the net amount that we pay into the Railroad Retirement Account, but excluding principal repayments and interest payments to the Hospital Insurance Trust Fund and transfer payments between the Old-Age and Survivors Insurance and the Disability Insurance Trust Funds. The ratio as calculated under this rule is rounded to the nearest 0.1 percent.

(d) *Which index we use.* We use the CPI if the OASDI fund ratio is 15.0 percent or more for any year from 1984 through 1988, and if the ratio is 20.0 percent or more for any year after 1988. We use either the CPI or the AWI, depending on which has the lower percentage increase in the measuring period (see § 404.274), if the OASDI fund

ratio is less than 15.0 percent for any year from 1984 through 1988, and if the ratio is less than 20.0 percent for any year after 1988. For example, if the OASDI fund ratio for 1986 is 17.0 percent, the cost-of-living increase effective December 1986 is based on the CPI.

7. Section 404.273 is revised to read as follows:

§ 404.273 When automatic cost-of-living increases are to be made.

We make automatic cost-of-living increases when the applicable index, either the CPI or the AWI, rises by 3.0 percent or more over a specified measuring period (see the rules in § 404.274). If the cost-of-living increase is to be based on an increase of 3.0 percent or more in the CPI, the increase becomes effective in December of the year in which the measuring period ends. If the increase is to be based on an increase of 3.0 percent or more in the AWI, the increase becomes effective in December of the year after the year in which the measuring period ends.

8. Section 404.274 is revised to read as follows:

§ 404.274 Measuring the increase in the indexes.

(a) *General.* Depending on the OASDI fund ratio, we measure the rise in one index or in both indexes during the applicable measuring period (described in paragraphs (b) and (c) of this section) to determine whether there will be an automatic cost-of-living increase and if so, its amount.

(b) *Measuring period based on CPI.* For the increase effective December 1984 and later years, the measuring period we use for finding the amount of the CPI increase—

(1) Begins with—

(i) Any calendar quarter in which an *ad hoc* benefit increase is effective; or, if later,

(ii) the third calendar quarter of any year in which the last automatic increase became effective; and

(2) Ends with the third calendar quarter of the following year, but only if the CPI has increased by at least 3.0 percent (after rounding to the nearest one-tenth of one percent) since the beginning of the measuring period. (If the CPI increase is less than 3.0 percent, we extend the measuring period to the third quarter of the next year, doing so repeatedly until the 3.0 percent level is reached.) If this measuring period ends in a year after the year in which an *ad hoc* increase was enacted into law or took effect, there can be no cost-of-living increase based on this measuring period and we will apply the rule in paragraph (d) of this section.

(c) *Measuring period based on AWI.* The measuring period we use for finding the amount of the AWI increase—

(1) Begins with—

(i) The calendar year before the year in which an *ad hoc* benefit increase is effective; or, if later,

(ii) the calendar year before the year in which the last automatic increase became effective; and

(2) Ends with the following year, but only if the AWI has increased by at least 3.0 percent (after rounding to the nearest one-tenth of one percent) in that one-year period. (If the AWI increase is less than 3.0 percent, we extend the measuring period to the next year, doing so repeatedly until the 3.0 percent level is reached.) If this measuring period ends in a year in which an *ad hoc* increase was enacted into law or took effect, there can be no cost-of-living increase based on this measuring period and we will apply the rule in paragraph (d) of this section.

(d) *When no automatic cost-of-living increase is possible.* No automatic cost-of-living increase is possible for the calendar year that immediately follows a year in which an *ad hoc* increase was enacted into law or took effect. The measuring period for the next automatic cost-of-living increase—

(1) Where the measuring period is based on the CPI,

(i) Begins with the calendar quarter in which the *ad hoc* increase took effect; and

(ii) Ends with the third calendar quarter of the next year in which the CPI has risen by at least 3.0 percent if an *ad hoc* increase was not enacted or effective in the preceding year. (If the CPI increase is less than 3.0 percent, or an *ad hoc* increase was enacted or effective in the prior year, we extend the end of the measuring period to the third quarter of the following year, doing so repeatedly until the 3.0 percent level is reached in a year which does not immediately follow an *ad hoc* increase year.)

(2) Where the measuring period is based on the AWI,

(i) Begins with the calendar year before the year in which the *ad hoc* increase took effect; and

(ii) Ends with the next calendar year in which the AWI has increased by at least 3.0 percent and in which an *ad hoc* increase is not enacted or effective. (If the AWI increase is less than 3.0 percent, we extend the end of the measuring period to the following year, doing so repeatedly until the 3.0 percent level is reached in a year in which an *ad hoc* increase is not enacted or effective.)

9. Section 404.275 is revised to read as follows:

§ 404.275 Amount of automatic cost-of-living increases.

(a) *Based on CPI.* When the average of the CPI of the three months of the quarter ending the measuring period is at least 3.0 percent higher than the average of the CPI for the three months of the quarter in which the measuring period began, we compute an automatic cost-of-living increase percentage to be effective beginning with benefits payable for December of the year in which the measuirng period ended. To compute the average of the CPI, the three monthly CPI figures (which are published to one decimal place) are added, and the total is divided by 3 and then rounded to the nearest 0.1. If the CPI is the applicable index (see § 404.272(d)), we apply the increase (rounded to the nearest one-tenth of one percent) to the amounts described in § 404.271. We round the resulting amounts to the next lower multiple of $0.10 if not already a multiple of $0.10.

(b) *Based on AWI.* When the AWI for the year which ends the measuring period is at least 3.0 percent (rounded to the nearest 0.1) higher than the AWI for the year which begins the measuring period, that percent is the automatic cost-of-living increase which is due beginning with benefits payable for December of the year after the measuring period ended. If the AWI is the applicable index (see § 404.272(d)), we apply that percentage increase to the amounts described in § 404.271. We round the resulting amounts to the next lower multiple of $0.10 if not already a multiple of $0.10.

(c) *Additional increase.* See § 404.278 for the additional increase which might be possible.

§ 404.277 [Amended]

10. Section 404.277, as proposed for amendment at 48 FR 10696 dated March 14, 1983, is further amended in paragraph (b) by changing "June" to "December" each place it appears.

11. A new section 404.278 is added to read as follows:

§ 404.278 Additional cost-of-living increase.

(a) *General.* In addition to the cost-of-living increase explained in § 404.275 for a given year, we will further increase the amounts in § 404.271 if—

(1) The OASDI fund ratio is more than 32.0 percent in the given year in which a cost-of-living increase is due; and

(2) In any prior year, the cost-of-living increase was based on the AWI as the lower of the CPI and the AWI (or would have been based on the AWI except

that it was less than the required 3.0 percent increase).

(b) *Measuring period for the additional increase*—(1) *Beginning.* To compute the additional increase, we begin with—

(i) In the case of certain uninsured beneficiaries age 72 and older (see § 404.380), the last calendar year in which a cost-of-living adjustment was based on the AWI rather than the CPI;

(ii) For all other individuals and for maximum benefits payable to a family, the year in which the insured individual became eligible for old-age or disability benefits to which he or she is currently entitled, or died before becoming eligible.

(2) *Ending.* The end of the measuring period is the year before the first year in which a cost-of-living increase is due based on the CPI and in which the OASDI fund ratio is more than 32.0 percent.

(c) *Compounded percentage benefit increase.* To compute the additional cost-of-living increase, we must first compute the compounded percentage benefit increase (CPBI) for both the cost-of-living increases that were paid during the measuring period and for the increases that would have been paid if the CPI had been the basis for the increases. The CPBI is—

(1) The product of the annual benefit increases, expressed as decimals rather than as percentages, plus 1 for each decimal;

(2) Less 1;

(3) Multiplied by 100.

(d) *Computing the CPBI.* The computation of the CPBI is as follows—

(1) Take the actual cost-of-living increase percentage (expressed as a decimal) for each year in the measuring period and increase each decimal by 1 (e.g., 4.6 percent becomes 1.046);

(2) Multiply the resulting decimal for the first year by the decimal for the second, then multiply that product by the decimal for the third year, and continue until the last decimal has been multiplied by the product of the preceding decimals;

(3) Subtract 1 from the last product;

(4) Multiply the remaining product by 100. The result is what we call the *actual* CPBI.

(5) substitute the cost-of-living increase percentage(s) that would have been used if the increase(s) had been based on the CPI, (for some years, this will be the percentage that was used) and do the same computations as in paragraphs (d)(1) through (4). The result is what we call the *assumed* CPBI.

(e) *Computing the additional cost-of-living increase.* To compute the percentage increase, we—

(1) Subtract the actual CPBI from the assumed CPBI;

(2) Add 100 to the actual CPBI;

(3) Divide the answer from paragraph (e)(1) of this section by the answer from paragraph (e)(2), of this section, multiply the quotient by 100, and round to the nearest 0.1. The result is the additional increase percentage, which we apply to the appropriate amount described in § 404.271 after that amount has been increased under § 404.275 for a given year. If that increased amount is not a multiple of $0.10, we will decrease it to the next lower multiple of $0.10.

(f) *Restrictions on paying an additional cost-of-living increase.* We will pay the additional increase to the extent necessary to bring the benefits up to the level they would have been if they had been increased based on the CPI. However, we will pay the additional increase only to the extent payment will not cause the OASDI fund ratio to drop below 32.0 percent in the year after the year in which the increase is effective.

12. A new section 404.313 is added to read as follows:

§ 404.313 Using delayed retirement credit to increase old-age benefit amount.

(a) *General.* (1) If you do not receive old-age benefits for the month you reach age 65 (retirement age) or for any later month before the month in which you reach age 70 (72 before 1984), you may earn delayed retirement credits which may increase your benefit amount when you retire. You earn delayed retirement credits for each of those months for which you are fully insured and are eligible for but do not receive old-age benefits, either because of your work or earnings, or because you have not applied for benefits. If you were entitled to old-age benefits before age 65 you may still earn delayed retirement credit for months beginning with age 65 in which your beneifits were reduced to zero because of your work or earnings.

(2) Age 65 is retirement age, the age at which entitlement to full retirement benefits may begin, and is the age at which you may begin to earn delayed retirement credits. Age 65 is the retirement age for people who reach that age before the year 2003. For people who reach age 65 after 2002, retirement age will gradually increase from 65 to 67, depending on each person's date of birth.

(b) *How we determine delayed retirement credits.* (1) *General.* The amount of the delayed retirement credit depends on the year you reach age 65, and the number of months you are eligible for and do not receive old-age benefits from age 65 up to age 70 (72 before 1984). We total these months, which need not be consecutive, multiply the total by the applicable percent as provided in paragraphs (b) (2), (3), and (4) of this section, multiply your benefit amount by this product, and round to the next lowest multiple of $0.10 if the answer is not already a multiple of $0.10. The result is your delayed retirement credit which we add to your benefit amount and round the sum to the next lowest multiple of $1.00 if it is not already a multiple of $1.00.

(2) *Before 1982.* If you reach age 65 before 1982, your delayed retirement credit equals one-twelfth of one percent of your benefit amount times the number of months after 1970 in which you are age 65 or older and for which you are eligible but do not receive old-age benefits.

(3) *After 1981 and before 1990.* If you reach age 65 after 1981 and before 1990, your delayed retirement credit equals on-fourth of one percent of your monthly benefit amount times the number of months in which you are age 65 or older and for which you are eligible but do not receive old-age benefits.

(4) *Beginning with 1990.* If you reach age 65 in 1990 or later, the rate of the delayed retirement credit (i.e., one-fourth of one percent as stated in paragraph (b)(3) of this section) is increased by one-twenty-fourth of one percent on each even year through 2008. Thus, depending on when you reach age 65, your delayed retirement credit percent will be as follows:

Year you reach age 65	Delayed retirement credit percent
1990	7/24 of 1 percent.
1991	Do.
1992	1/3 of 1 percent.
1993	Do.
1994	3/8 of 1 percent.
1995	Do.
1996	5/12 of 1 percent.
1997	Do.
1998	11/24 of 1 percent.
1999	Do.
2000	1/2 of 1 percent.
2001	Do.
2002	13/24 of 1 percent.
2003	Do.
2004	7/12 of 1 percent.
2005	Do.
2006	5/8 of 1 percent.
2007	Do.
2008 and later	2/3 of 1 percent.

Example. Alan was qualified for old-age benefits when he reached age 65 in January 1983, but decided not to apply for old-age benefits immediately because he was still working. When he became age 66 in January 1984, he stopped working and applied for these benefits beginning with that month. Based on his earnings, his primary insurance amount was $226.50, and his full monthly old-age benefit amount would have been rounded to $226.00 if no delayed retirement credits were added. However, he did not receive benefis for the 12 months from the month in

which he became 65 (January 1983) until the first month in which he stopped working (January 1984). Therefore, his monthly old-age benefit of $226.50 (before rounding to the lower dollar) was increased by three percent (one quarter of one percent times 12 months) to yield a total $233.29, which rounded to the next lower multiple of $0.10 is $233.20 and rounded to the next lower multiple of $1 is $233.

(c) *Effective date of delayed retirement credit.* If you are entitled to benefits, we examine our records after the end of each calendar year to determine whether you have earned the delayed retirement credit (i.e., whether there were months in which you were fully insured and eligible for benefits, but did not receive them). Any increase in your benefit amount due to the delayed retirement credit is effective beginning with January of the year after the credit is earned. If you are age 65 or older and eligible for old-age benefits but have not applied, we compute the delayed retirement credit for the year(s) before you applied and pay it to you as part of your first benefit check. The delayed retirement credit for the year you applied and later years is added to your benefits beginning with the following January. However, in either case, in the year in which you attain age 70 (72 before 1984), we compute the credit through the month you reach that age and add it to your benefit amount beginning with that month.

(d) *Delayed retirement credit and special minimum primary insurance amounts.* We do not add any delayed retirement credit to your old-age benefit if your benefit is based on the special minimum primary insurance amount described in § 404.260. We add the delayed retirement credit only to old-age benefits based on your regular primary insurance amount, i.e., as computed under one of the other provisions of Subpart C of this Part. If the sum of your benefit is based on the regular primary insurance amount plus your delayed retirement credit is higher than the benefit based on your special minimum primary insurance amount, we pay the higher amount to you. However, if the special minimum primary insurance amount is higher than the regular primary insurance amount without the delayed retirement credit, we use the special minimum primary insurance amount to determine the family maximum and the benefits of others entitled on your earnings record.

(e) *Effect of delayed retirement credit on other benefits*—(1) *Surviving spouse or surviving divorced spouse.* If you earned delayed retirement credits during your lifetime, we compute your surviving spouse's or surviving divorced spouse's benefit based on your regular primary insurance amount plus the amount of the delayed retirement credit. All delayed retirement credits, including credits in the year of death, can be used in computing your surviving spouse's or surviving divorced spouse's benefit beginning with the month of death. We compute the delayed retirement credit up to, but not including, the month of death.

(2) *Other family members.* We do not use your delayed retirement credits to increase the benefits of other family members entitled on your earnings record.

(3) *Family maximum.* The delayed retirement credits are added to your benefit after we compute the family maximum. However, your delayed retirement credits which are used to compute your surviving spouse's or surviving divorced spouse's benefits are added to the spouse's benefits before we reduce for the family maximum.

13. Section 404.353 is amended by revising the second sentence in paragraph (b) to read as follows:

§ 404.353 Child's benefit amounts.

* * * * *

(b) * * * If your benefit before any reduction would be larger on an earnings record with a lower primary insurance amount and no other person entitled to benefits on any earnings record would receive a smaller benefit as result of your receiving benefits on the record with the lower primary insurance amount, you will receive benefits on that record. See § 404.407(d) for a further explanation. * * *

§ 404.403 [Amended]

14. Section 404.403 is amended by:

A. Revising the title paragraph (e) to read "Person entitled on more than one record for years after 1978 and before 1984."

B. Revising the cross-reference in paragraph (e)(1) to read "§ 404.353(b)."

C. Adding a new paragraph (f) to read as follows:

* * * * *

(f) *Person entitled on more than one record for years after 1983.* (1) If any person entitled to monthly benefits on the earnings record of an insured individual would, except for the limitation described in § 404.353(b), be entitled to child's insurance benefits on the earnings record of one or more other insured individuals, the total benefits payable to all persons on the earnings record of any of those insured individuals may not be reduced to less than the smaller of—(i) the sum of the maximum amounts of benefits payable on the earnings records of all the insured indivuduals, or (ii) 1.75 times the highest primary insurance amount possible for January 1983, or if later, January of the year that the person becomes entitled or reentitled on more than one record. This highest primary insurance amount possible for that year will be based on the average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year. Thereafter, the total monthly benefits payable to persons on the earnings record of those insured individuals will then be increased only when monthly benefits are increased because of cost-of-living adjustments (see § 404.270 ff).

(2) The rule in paragraph (e)(2) of this section also applies after 1983.

15. Section 404.407 is amended by revising paragraph (d) to read as follows:

§ 404.407 Reduction because of entitlement to other benefits.

* * * * *

(d) *Child's insurance benefits.* A child may, for any month, be simultaneously entitled to a child's insurance benefit on more than one individual's earnings if all the conditions for entitlement described in § 404.350 are met with respect to each claim. Where a child is simultaneously entitled to child's insurance benefits on more than one earnings record, the general rule is that the child will be paid an amount which is based on the record having the highest primary insurance amount. However, the child will be paid a higher amount which is based on the earnings record having a lower primary insurance amount if no other beneficiary entitled on any record would receive a lower benefit because the child is paid on the record with the lower primary insurance amount. (See § 404.353(b)).

PART 416—[AMENDED]

16. The authority citation for Subpart D of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611, 1612, 1617, and 1631 of the Social Security Act as amended; 49 Stat. 647, as amended, 86 Stat. 1466, 86 Stat. 1468, 86 Stat. 1475 (42 U.S.C. 1302, 1382, 1382a, and 1383).

17. Section 416.405 is revised to read as follows:

§ 416.405 Cost-of-living adjustments in benefits.

Whenever benefits amounts under Title II of the Act (Part 404 of this chapter) are increased by any percentage effective with any month as

a result of a determination made under section 215(i) of the Act, each of the dollar amounts in effect for such month under §§ 416.410, 416.412, and 416.413, as specified in such sections or as previously increased under this section or under any provision of the Act, will be increased. We will increase the unrounded yearly SSI benefit amount by the same percentage by which the title II benefits are being increased based on the Consumer Price Index, or, if greater, the percentage they would be increased if the rise in the Consumer Price Index had been the basis for the title II increase. (See §§ 404.270–404.277 for an explanation of how the title II cost-of-living adjustment is computed.) If the increased annual SSI benefit amount is not a multiple of $12, it will be rounded to the next lower multiple of $12.

18. Section 416.410 is revised to read as follows:

§ 416.410 Amount of benefits; eligible individual.

The benefit under this part for an eligible individual who does not have an eligible spouse, who is not in a certain kind of institution (see § 416.211), and who is not a qualified individual (as defined in § 416.221), shall be payable at the rate of $3,900 per year ($325 per month) after rounding, effective for the period beginning January 1, 1985. This rate is the result of a 3.5 percent cost-of-living adjustment (see § 416.405) to the December 1984 rate. For the period January 1, 1984 through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $3,768 per year ($314 per month). For the period July 1, 1983, through December 31, 1983, the rate payable was $3,651.60 per year ($304.30 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, section 401). For the period July 1, 1982, through June 30, 1983 the rate, as increased by the 7.4 percent cost-of-living adjustment, was $3,411.60 yearly ($284.30 monthly). The monthly rate is reduced by the amount of the individual's income which is not excluded pursuant to Subpart K of this part.

19. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this Part for an eligible couple, neither of whom is in a certain kind of institution (see § 416.211) nor is a qualified individual (as defined in § 416.221) shall be payable at the rate of $5,856 per year ($488 per month) after rounding, effective for the period beginning January 1, 1985. This rate is the result of a 3.5 percent cost-of-living adjustment (see § 416.405) to the December 1984 rate. For the period January 1, 1984 through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,664 per year ($472 per month). For the period July 1, 1983, through December 31, 1983, the rate payable was $5,476.80 per year ($456.40 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, § 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $5,116.80 yearly ($426.40 monthly). The monthly rate is reduced by the amount of the couple's income which is not excluded pursuant to Subpart K of this part.

20. Section 416.413 is revised to read as follows:

§ 416.413 Amount of benefits; qualified individual.

The benefit under this Part for a qualified individual (defined in § 416.221) is payable at the rate for an eligible individual or eligible couple plus an increment for each essential person (defined in § 416.222) in the household, reduced by the amount of countable income of the eligible individual or eligible couple as explained in § 416.420. A qualified individual will receive an increment of $1,956 per year ($163 per month) after rounding, effective for the period beginning January 1, 1985. This rate is the result of a 3.5 percent cost-of-living adjustment (see § 416.405) to the December 1984 rate, and is for each essential person (as defined in § 416.222) living in the household of a qualified individual. (See § 416.532.) For the period January 1, 1984 through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $1,884 per year ($157 per month). For the period July 1, 1983, through December 31, 1983, the rate was $1,830 per year ($152.50 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, § 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $1,710 yearly ($142.50 monthly). The total benefit rate, including the increment, is reduced by the amount of the individual's or couple's income that is not excluded pursuant to Subpart K of this part.

[FR Doc. 85–16078 Filed 7–3–85; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR–68–80]

Front-End Tertiary Oil Under the Crude Oil Windfall Profit Tax Act of 1980; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the treatment of front-end tertiary oil under the Crude Oil Windfall Profit Tax Act of 1980 that was published in the **Federal Register** for December 5, 1980 (45 FR 80551).

FOR FURTHER INFORMATION CONTACT: David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297)).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking that was published in the **Federal Register** for December 5, 1980 (45 FR 80551). That notice contained proposed amendments (§ 51.4994–2) to the Excise Tax Regulations (26 CFR Part 51) under section 4994(c) of the Internal Revenue Code of 1954. The regulations related to the treatment of front-end oil under the Crude Oil Windfall Profit Tax Act of 1980. A number of comments were received concerning the notice and a public hearing was held on February 24, 1981. Due to the fact that the front-end oil exemption expired on September 30, 1981, and the limited applicability of the proposed rules, it has been determined that such notice should be withdrawn. However, no inference should be drawn with respect to the positions taken in the proposed regulations because of the withdrawal of the notice.

Drafting Information

The principal author of this document is David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both in matters of substance and style.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR Part 51 relating to the treatment of front-end oil tertiary oil under the Crude Oil Windfall Profit Tax Act of 1980 published in the **Federal Register** for December 5, 1980 (45 FR 80551), are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-16029 Filed 7-3-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09 85-05]

Anchorage Grounds; Detroit River, Detroit, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to designate two anchorages on the U.S. side of the international boundary in the Detroit River. The proposed anchorages will be in the vicinity of Belle Isle, and the Rouge River. Past experience has shown that the existing Ojibway Anchorage on the Canadian side of the Detroit River has been unable to hold all vessels desiring anchorage space, paritcularly during spring ice conditions. The creation of these two anchorages will increase the area available for safe vessel mooring, and provide a holding area in the event U.S. authorities need to detain a vessel.

DATE: Comments must be received on or before August 19, 1985.

ADDRESSES: Comments must be mailed to Commander (mpes), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199. The comments will be available for inspection and copying at Marine Safety Division, Room 2019, 1240 East Ninth Street, Cleveland, OH. Normal Office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns III, Ninth Coast Guard District, Marine Port and Environmental Safety Branch, Telephone Number (216) 522-3919.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD09 85-05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ensign George H. Burns III, Project Officer, and Lieutenant Raymond A. Pelletier, project attorney, 9th Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Coast Guard received information that indicated a potential need for designated anchorages on the U.S. side of the international boundary in the Detroit River. Captain of the Port Detroit, Michigan, has evaluated the needs of the marine industry and Captain of the Port Detroit with respect to such anchorages. Based on this evaluation the Coast Guard believes that the creation of two anchorage areas is desirable.

The two proposed anchorages would be located downstream from Belle Isle, and adjacent to the Mouth of the Rouge River. These choices were developed after a careful survey of the river was taken and after consultation with various marine interests such as shipmasters, registered pilots, towing vessel operators, representatives of the Corps of Engineers, the Wayne County Port Authority, and the Canadian Coast Guard.

The following concerns can be addressed by the establishment of one or perhaps two anchorages in the Detroit River:

1. The designated anchorages (Ojibway Anchorages) located in Canadian waters across from National Steel are limited in size. There are time such as the 1984 ice jam in the St. Clair River when more anchorage space is needed.

2. The present river regulations (33 CFR 162.136) state that vessels shall be anchored in the Detroit River so as not to swing into the channel or across steering courses. Since the limits of the channel in the Detroit River vary and may extend almost to the river bank, safe anchorages are not always obvious. Creation of these anchorages will therefore increase navigational safety.

3. There is a high level of background lighting generally throughout this area. Consequently, ships not anchored in designated anchorages may not be identified by personnel aboard transiting vessels. By encouraging vessels to use designated anchorages the risk of collisions involving anchored vessels is reduced.

4. In the event that a vessel is arrested by a federal order or is detained by U.S. Customs, the U.S. Attorney or the Coast Guard, it would be advantageous to allow the vessel to proceed to a designated anchorage until the issue is resolved. Technically, if a vessel is directed to the Ojibway Anchorage, it is in Canadian waters and out of the control and jurisdiction of U.S. authorities.

The reasons for selecting the Belle Isle and Rouge River locations are as follows:

1. *Belle Isle Anchorage*—This area was chosen because it has good water, good holding ground and is well clear of the main shipping channel passing Belle Isle. In the past this location has been used by vessels waiting for more favorable conditions to proceed with a voyage. The area was examined by the Coast Guard in 1978, and it was surveyed by the Corps of Engineers in that same year. One high spot was found and removed.

Two minor potential objections to the location have been identified. First, the anchorage might encroach on the small boat channel behind Belle Isle. This is not considered to be a problem because the height restrictions under the Belle Isle Bridge prevent large commercial tugs and pleasure boats from using the channel. When the channel is used, small boats tend to hug the mainland shoreline and therefore would not be hampered by a vessel in anchorage. The second concern is one of possible interference with commercial concerns along the shoreline. Little activity takes place at the facilities along this portion of the river. The Huron Cement Company is the only facility that has any waterborne activity and it is not felt that a vessel, properly anchored, would interfere with their operations. Future plans for this shoreline area call for development of city owned parks and relocation of commercial interests such as Huron Cement.

2. *River Rouge Anchorage*—This location was chosen for its close proximity to the center of commercial

activity in the Port of Detroit. It also has good holding ground and is considered to be clear of the tracks used by vessels in the main channel. It does not block any shoreside interests and it is another area vessels have traditionally anchored awaiting for a berth or to transit the Rouge River.

The following potential objections have been identified and are discussed below:

a. *Nearness to Mouth of River Rouge*—based on past experience this is not considered a problem by masters of vessels normally using the Rouge.

b. *Nearness to submerged pipeline*—if a vessel is properly anchored and observing proposed regulations this submergd pipeline (43 ft. below LWD) should not be a problem.

c. *Proximity to channel*—the anchorage would be located at one of the wider portions of the river. Anchored vessels would be in clear sight of vessels coming from either direction and would be clear of steering courses.

If the two areas described are implemented it is not felt that anchorage buoys will be necessary. There are adequate fixed reference on both shorelines for vessels to properly fix their positions.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The Detroit River is a major waterway bounded by municipal and industrial areas that have been exposed to waterborne commerce for some time. The creation of these anchorages will be in locations which are adjacent to areas that already frequently are exposed to use by the types of vessels that will moor in the anchorages. Furthermore, the regulations that will apply to the utilization of these areas are requirements that are common to the practice of good seamanship. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110.

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 110 is amended by adding § 110.206 to read as follows:

§ 110.206 Detroit River, Michigan.

(a) *The anchorage grounds*—(1) *Belle Isle Anchorage.* The area in the Detroit River immediately downstream from Belle Isle on the U.S. side of the International Boundary lying within the following boundaries: beginning at a point bearing 250°T, 5400 feet from the James Scott Memorial Fountain (42 20'6"N, 82 59'57"W) at the West end of Belle Isle; then 161°T, 8000 feet; thence 251°T, 4000 feet; thence 341°T, 800 feet; thence 071°T, 4000 feet to the point of origin

(2) *River Rouge Anchorage.* The area in the Detroit River immediately down river form the entrance to the Short Cut Canal, River Rouge, on the U.S. side of the International Boundary lying within the following boundaries: beginning at a point bearing 153°T, 450 feet from the Detroit Edison Cell Light 2; thence 110°T, 700 feet; thence parallel to the international boundary line 200°T, 2600 feet; thence 290°T, 700 feet to Great Lakes Steel Shoal Lighted Buoy 3; thence 020°T, 2600 feet to the point of origin.

(b) *The regulations* (1) Anchorage is prohibited outside of established anchorages except in case of emergency. In an emergency, if it becomes necessary to anchor a vessel outside an established anchorage, the vessel shall be anchored so that it does not interfere with or endanger any facility or other vessel. The master or person in charge of the vessel shall notify the Captain of the Port of the location of the emergency anchoring by the most expeditious means and shall move the vessel as soon as the emergency is over.

(2) Anchors must not be placed outside the anchorage areas, nor shall any vessel be so anchored that any portion of the hull or rigging shall at any time extend outside the boundaries of the anchorage areas.

(3) The Belle Isle Anchorage area is for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting berths, weather or other conditions favorable to the resumptions of their voyage.

(4) In the River Rouge Anchorage the requirements of commercial ships conducting bunkering operations shall take precedence. Vessels conducting bunkering operations will notify the Captian of the Port at least four hours in advance and at the completion of operations.

(5) No vessel may be anchored unless it maintains a continuous bridge watch, guards and answers channel 16 FM and channel 12 FM (VTC SARNIA sector frequency), maintains an accurate position plot and can take appropriate action to ensure the safety of the vessel, structures and other vessels.

(6) Vessels may not anchor in the Belle Isle Anchorage for more than 72 hours or the River Rouge Anchorage for more than 12 hours without permission of the Captain of the Port.

(7) Nothing in this section relieves the owner or person in charge of any vessel from the penalties for obstructing or interfering with navigation or navigational aids or for failing to comply with the navigation laws for lights, day shapes, or fog signals or the obligation to comply with any other applicable laws and regulations.

Dated: June 24, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 85-16019 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CG09-85-10]

Special Anchorage Area; Niagara River, Youngstown, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard, at the request of public and private interests in the town of Youngtown, New York, is proposing to expand an existing Special Anchorage Area in the Niagara River adjacent to Youngstown, New York. Increasing boater traffic and the lack of suitable mooring space within the river necessitates the expansion of this area.

The expansion of this area will provide the needed space to accommodate boating interests in a safe manner.

DATE: Comments must be received on or before August 19, 1985.

ADDRESSES: Comments should be mailed to Commander (mpes), Ninth Coast Guard District, 1240 East Ninth Street Rm 2019, Cleveland Ohio 44199. Normal Office hours are between 8:00 a.m. and 4:00 p.m., Monday through

Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns III, Marine Port and Environmental Safety Branch, 1240 East Ninth St., Cleveland OH 44199, (216) 522-3919.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD09-85-10) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ensign George H. Burns III, Marine Port and Environmental Safety Branch, project officer and Lieutenant Raymond A. Pelletier, Project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The village of Youngstown, New York, in conjunction with the Youngstown, New York Yacht Club, and marine interests within the area has requested that additional special anchorage space be created adjacent to the town of Youngstown, New York in the Niagara River.

Increasing boater traffic in this area has created a need for additional mooring space in the river. Due to the physical characteristics of the river itself ie., relatively deep water, strong current and poor bottom composition, vessel anchoring is not recommended for most vessels. It is anticipated that 25 to 40 seasonally permanent moorings will be placed in this area once approval has been received from the U.S. Army Corps of Engineers.

Control and assignment of mooring space in this area is planned to be undertaken by the Youngstown Harbor Committee which will be established by the village of Youngstown. By expanding this additional Special Anchorage Area boater safety will be increased as the need for attempting to anchor under unfavorable river conditions will be minimized.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The economic impact is minimal because this regulation merely expands an existing anchorage.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

PART 110—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 110.85 is amended by revising paragraph (a) and adding a note to read as follows:

§ 110.85 Niagara River; Youngstown, New York.

(a) *Area 1.* Beginning at a point at the intersection of the south line of Swain Street extended with the east shoreline of the Niagara river at Latitude 43°14'33" N, longitude 79°03'7.5" W; thence westerly to a point at latitude 43°14'33" N, longitude 79°03'9.5" W; thence Southerly to a point at latitude 43°14'15.5" N, longitude 79°03'10" W; thence westerly to a point at latitude 43°4'15.5" N, longitude 79°03'17" W; thence northerly to a point at latitude 43°14'54.5" N, longitude 79°03'14" W; thence southeasterly to a point at latitude 43°14'52.3" N, longitude 79°03'09" W; thence southerly to a point at latitude 43°14'51.4" N, longitude 73°03'09" W; thence easterly to a point at latitude 43°14'51.5" N, longitude 79°03'6.5" W; thence along the shoreline to the point of beginning.

* * * * *

*Note.—The Youngstown Harbor Commission controls the location, type, and assignment of moorings placed in the special anchorage areas in this section.

Dated: June 21, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander Ninth Coast Guard District.

[FR Doc. 85-16023 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-85-08]

Drawbridge Operation Regulations; Tigre Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge over Tigre Bayou, Mile 2.3, on LA330 near Delcambre, Vermilion Parish, Louisiana, by requiring that at least four hours advance notice be given for an opening of the draw at all times. Presently, the draw is required to open on signal for 5 a.m. to 9 p.m. and on 12 hours advance notice from 9 p.m. to 5 a.m. This proposal is being made because of infrequent requests for opening the draw. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 5 a.m. to 9 p.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 19, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other material referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested pesons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and given reasons for concurrence with or

any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulations

Vertical clearance of the bridge in the closed position is 5.0 feet above high water and 8.0 feet above low water. Navigation through the bridge consists of shrimp/fish boats and an occasional pleasure craft. Data submitted by the LDOTD show that this traffic through the bridge has steadily declined, as follows:

(1) For the years 1980 through 1984, there were 766, 511, 593, 374, and 124 bridge openings, respectively.

(2) In 1984, between 5 a.m. and 9 p.m., the period when the bridge now has to open on signal, there were 122 bridge openings—an average of 10.0 openings per month or an average of one opening every three days. In 1983, there were 366 openings for the same time period.

(3) In 1984, between 9 p.m. and 5 a.m., the period when the bridge now is on 12 hours advance notice, there were two openings for naviation. In 1983, there were eight openings for the same time period.

Considering the few openings involved, the Coast Guard feels that the current on site attendance at the bridge between 5 a.m. and 9 p.m. is not warranted and that bridge can be placed on four hours advance notice for an opening at all times. This will provide relief to the bridge owner, while still providing for the reasonable needs of naviation.

The advance notice for opening the draw would be given by placing a collect call at any time to the LDOTD District Office at Lafayette, Louisiana, telephone (318) 233–7404. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Econmic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The econimic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge as evidenced by the 1984 bridge opening statistics which show that the bridge averaged only one opening every three days. These vessels can reasonalby given four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The Authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.507 is revised to read as follows:

§ 117.507 Tigre Bayou.

The draw of the S330 bridge, mile 2.3 near Delcambre, shall open on signal if at least four hours notice is given. The draw shall open on less that four hours notice for an emergency and shall on signal should a temporary surge in waterway traffic occur.

Dated: June 24, 1985.

T.T. Matteson,

Captain, U.S. Coast Guard Commander, 8th Coast Guard District, Acting.

[FR Doc. 85–16025 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

Submission of Commercial Bills of Lading Covering Tranportation Services Under Cost Reimbursement-Type Contracts

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) by requiring contractors doing business with the United States Government to submit cost reimbursement-type contract (CRTC) commercial bills of lading to GSA for audit.

DATE: Written comments must be received by no later than 4 p.m. August 5, 1985.

ADDRESS: Comments should be sent to General Services Administration (BWCP), 18th and F Streets, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures and Review Branch, Office of Transportation Audits, 202 (FTS) 786–3014.

SUPPLEMENTARY INFORMATION: Before 1975, the U.S. General Accounting Office (GAO) audited Standard Form (SF) 1103's, U.S. Government Bills of Lading, SF 1169's, U.S. Government Transportation Requests, as well as commercial bills of lading submitted by contractors doing business with the Government on cost reimbursement-type contracts (CRTC's). Effective October 12, 1975, these transportation audit functions were transferred from GAO to the General Services Administration (GSA) (General Accounting Office Act of 1974, Pub. L. 93–604) and transportation audit procedures formerly set forth in 4 CFR Subchapter D-Transportation were established in 41 CFR chapter 101.

The requirement that contractors submit CRTC commercial bills of lading to GAO for audit, however, resided in Federal procurement regulations rather than in 4 CFR Subchapter D–Transportation. For that reason, it was not made a part of 41 CFR 101. Consequently, some certifying and paying offices are unaware that CRTC commercial bills of lading are subject to GSA's transportation audit. This amendment to 41 CFR 101–41 clarifies GSA's audit function. GSA has determined that this rule is not a major rule for the purposes of Executive Order

12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–41

Accounting, Claims, Freight, Freight forwarders, Railroads, Transportation.

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

GSA proposes to amend Part 101–41 as follows:

1. The authority citation for 41 CFR 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by adding the following:

Sec.

101–41.807–4 Submission of commercial bills of lading convering transportation services by contractors using cost reimbursement-type contracts.

Subpart 101–41.8—Transportation Disbursement Procedures

3. Section 101–41.807–4 is added to read as follows:

§101–41.807–4 Submission of commercial bills of lading convering transportation services by contractors using cost reimbursement-type contracts.

(a) Legible copies of commercial bills of lading (CBL's) and other supporting documents for transportation services, for the account of and on which the United States will assume freight charges that were paid by a Federal agency's cost reimbursement-type prime contractors and their first-tier cost reimbursement-type subcontractors, are to be submitted to GSA for audit on a quarterly basis by the Federal agency's prime contractors.

(b) Each cost reimbursement-type prime contractor shall forward the copies of CBL's for each calendar quarter, no later than the last day of the following quarter, in one package to General Services Administration, Attn: BWAA/C, 18th and F Streets, NW., Washington, D.C. 20405. The shipment shall include the required documents for all first-tier cost reimbursement-type subcontractors. If, however, the inclusion of the transportation documents of any such subcontractors in the shipment is not practicable, such documents are to be transmitted in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the contractor to GSA. The contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the sender shall accompany each shipment of transportation documents. The copy, duly signed and acknowledging receipt of the shipment, will be returned by GSA. The statement should show:

(1) The name and address of the prime contractor.

(2) The contract symbol and number.

(3) The name and address of the field office or Headquarters office administering the contract.

(4) The total number of bills submitted.

(5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the contractor's voucher or check numbers.

Dated: June 17, 1985.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 85–16049 Filed 7–3–85; 8:45 am]

BILLING CODE 6820–AM–M

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41 CFR Part 101–41

Reduce Number of Copies in Standard Form 1203, U.S. Government Bill of Lading—Privately Owned Personal Property, Set

AGENCY: Office of the Controller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to reduce the number of copies in the Standard Form (SF) 1203, U.S. Government Bill of Lading—Privately Owned Personal Property (POPPGBL), set, from nine to six by eliminating the following: SF 1206—Freight Waybill, Carrier's Copy, and two copies of SF 1203–A, Memorandum Copy. The increased use of state of the art printers that can print only six copies necessitates reducting the present set.

COMMENT DATE: Written comments must be received no later than 4 p.m. August 5, 1985.

COMMENTS: Written comments should be sent to General Services Administration, (BWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures and Review Branch, Office of Transportation Audits (202) 786–3014.

SUPPLEMENTARY INFORMATION: The POPPGBL was promulgated by GSA at the request of the Department of Defense (DOD) through its traffic manager, the Military Traffic Management Command (MTMC). The nine-part form was specifically designed to fill the informational and distributive needs for DOD's household goods movements. Section 101–41.302(b) of the Code of Federal Regulations (CFR) indicates that the use of SF 1203 is mandatory for DOD and optional for other Federal agencies. MTMC states that current state-of-the-art printers cannot process nine copies at one time. Most are rated for six copies. MTMC requests that GSA amend the regulations by reducing the POPPGBL set from nine parts to six parts.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–41

Accounting, Claims, Freight, Freight forwarders, Government property management, Moving of household goods, Transportation.

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

GSA proposes to amend 41 CFR Part 101–41 as follows:

1. The authority citation for 41 CFR 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

Subpart 101-41.3—Freight Transportation Services Furnished for the Account of the United States

2. Section 101–41.302–1 is amended by removing and reserving paragraph (z) as follows:

§ 101–41.302–1 Listing of forms.

* * * * *

(z) [Reserved].

* * * * *

3. Section 101–41.302–2 is amended by revising paragraph (c) and removing paragraph (e) as follows:

§ 101–41.302–2 Description and distribution of bills of lading.

* * * * *

(c) The U.S. Government Bill of Lading—Privately Owned Personal Property (POPPGBL) is a six-part form available in either snap-out or computer pin-feed formats. The sets are carbon-interleaved for simultaneous preparation. The POPPGBL is arranged in the following order:

(1) SF 1203 (original) is given to the carrier upon tender of the shipment for use as supporting documentation and is to be submitted with the voucher covering the transportation charges involved.

(2) SF 1204 (shipping order) is retained by the carrier's agent at the shipping point.

(3) SF 1203–A (memorandum copy), one of two copies, for use by the shipper for fiscal or administrative purposes. The remaining memorandum copy follows SF 1203–B.

(4) SF 1205 (freight waybill (original)) is given to the origin carrier and is either carried to destination or is otherwise sent to destination in compliance with origin carrier's instructions. It also serves as the substitute billing document when the original POPPGBL is lost or destroyed.

(5) SF 1203–B (memorandum copy-consignee) is given to the consignee (property owner) at time of pickup.

(6) SF 1203–A (memorandum copy) same as (3).

Subpart 101.41.49—Illustration of Forms

§ 101–41.4901–1206 [Removed]

4. Section 101–41.4901–1206 is removed.

Dated: June 12, 1985.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 85–16050 Filed 7–3–85; 8:45 am]

BILLING CODE 6820–AM–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

Civil Defense; State and Local Emergency Management Assistance Program (EMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is designed to elicit comment on two changes to 44 CFR Part 302.

One change is to rename and redefine *operational plans* as *emergency operations plans* (EOP's) and to add the requirement for EOP's to conform with the requirements of Civil Preparedness Guide (CPG) 1–8, "Guide for the Development of State and Local Emergency Operations Plans," and CPG 1–8A, and "Guide for the Review of State and Local Emergency Operations Plan."

The second change is to permit States to submit primary annual submission documents in amounts not to exceed their tentative allocation amounts and for those primary annual submissions to be approved as final annual submissions under certain prescribed conditions.

DATE: Comments are due September 3, 1985.

ADDRESS: Send Comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Edward E. Sergent, Office of Emergency Management Preparedness, Federal Emergency Management Agency, Washington, D.C. 20472 (202–646–3509).

SUPPLEMENTARY INFORMATION: The change in procedures will allow States to accelerate the process for receiving FEMA approval of documents of obligation for all or a portion of their annual EMA fund allocation upon appropriation by Congress and allotment of the funds. The last sentence in § 302.5B(5) "Allocations and Reallocations" is being revised. Rather than "certain standards applicable to the allocation of the reserve fund" being set forth in Civil Preparedness Guide (CPG) 1–3 they will be promulgated annually. This change is being made based on the premise that the amount of the EMA appropriation will likely vary from year to year (and consequently the amount of the reserve fund) as will circumstances in the various states; therefore, the Director should have the option to annually determine the basis for distribution of the reserve fund in accordance with current information as to civil defense needs.

Implementing Guidance

These regulations refer to CPG 1–3 throughout, and the fact that it is available from FEMA regional offices. However, FEMA is continuing to rely upon actual notice, through distribution of CPG 1–3 to all participating State and local governments and requiring certification of receipt thereof.

Nonapplicability

As Federal funding to which these regulations will be applicable is less than $100,000,000 annually, the reguation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to whom the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act, which is concerned with small entities. No regulatory flexibility analysis will be prepared.

Collection of Information

Sections 302.3 and 302.5 concern documentation of eligibility. These sections of the rule contain collection of information requirements which have been approved by Office of Management and Budget under the provisions of section 3504(h) of the Paperwork Reduction Act and under OMB No. 3067–0123 and 0138.

Comments

Comments on these matters are solicited and should be submitted to the above address in writing. Two copies are requested.

Upon receipt of and action on these suggestions, a final rule will be published in the **Federal Register.** The target date for this issuance is September 30, 1985.

List of Subjects in 44 CFR Part 302

Civil defense, Grants programs, National defense.

Accordingly, it is proposed to amend Chapter 1, Subchapter E, Part 302, Code of Federal Regulations as follows:

PART 302—CIVIL DEFENSE-STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

1. The authority citation for Part 302 is revised to read as follows:

Authority: 50 U.S.C. App. 2251 *et seq.*, Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 302.2 [Amended]

2. In § 302.2, paragraph (n) is amended by removing "(See Appendix B of CPG 1–3)" and adding ("See Appendix B of CPG 1–32 *Financial Assistance Guidelines* and CPG 2–12 *Financial Guidelines for State Comprehensive Cooperative Agreements.*)"

3. In § 302.2, paragraph (o) is amended by removing "(See Appendix A of CPG 1–3)" and adding "(See Appendix A of CPG 1–3 *Financial Assistance Guidelines;* and CPG 2–12 *Financial Guidelines for State Comprehensive Cooperative Agreements.*)"

4. In § 302.2, paragraph (p) is revised and an OMB Control Number is added to the end of the section to read as follows:

* * * * *

(p) *Emergency Operations Plan (EOP).* State or local government Emergency Operations Plans identify the available personnel, equipment, facilities, supplies, and other resources in the jurisdiction and state the method or scheme for coordinated actions to be taken by individuals and government services in the event of natural, manmade and attack-related disasters. (Approved by OMB under control number OMB 3067–0123)

* * * * *

§ 302.3 [Amended]

5. In § 302.3, the introductory paragraph is amended by removing "emergency operational plan" and adding "emergency operations plan" in place thereof.

6. In § 302.3, paragraph (b) is revised to read as follows:

* * * * *

(b) *Emergency Operations Plans (EOPs).* (1) Each participating State shall have an EOP approved by the Regional Director and complying with the criteria therefor set forth in this part and in CPG 1–3, "Guide for the Development of State and Local Emergency Operations Plans" and in CPG 1–8A, "Guide for the Review of State and Local Emergency Operations Plans," which plan must provide for coordinated actions to be undertaken throughout the State in the event of attack and in the event of other disasters.

(2) Each subgrantee jurisdiction shall have a local EOP which conforms with the criteria therefor set forth in CPG 1–3 and CPG 1–5 "Objectives for Local Civil Preparedness", CPG 1–8 and CPG 1–8A, and which has been approved by the local chief executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with the State's EOP. (Approved by the Office of Management and Budget under Contol No. 3067–0123)

§ 302.5 [Amended]

7. In § 302.5 paragraph (b)(5) is amended by revising the last sentence to read follows: "Certain factors to be applicable to the allocation of the reserve fund will be determined and promulgated annually, based upon how such amount may best be used to increase the civil defense capability of the Nation."

8. In § 302.5, paragraphs (f) through (j) are removed and paragraphs (f) through (m) added.

* * * * *

(f) In September of each year the Director will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) A State may provide to the Regional director a primary annual submission in an amount not to exceed its tentative allocation.

(h) By September 30 (or as soon thereafter as feasible), the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State may include any additional amounts from the reserve portion of the EMA funds, and shall be in accordance with the regulations in this part and CPG 1–3.

(i) Upon the appropriation becoming available, and if requested by a State, the Regional Director may approve such State's primary annual submission (if found to meet all requirements in this part and CPG 1–3) in an appropriate amount which does not exceed the amount of the State's share of the Director's formal allocation of the Federal appropriation. An award document obligating Federal funds on the basis of the approved primary annual submission may be executed in accordance with the provisions of CPG 1–3 and CPG 2–12, "Financial Guidelines for State Comprehensive Cooperative Agreements".

(j) Based on and within 60 days after notification of its formal allocation, each State shall provide to the Regional Director a final annual submission which meets all requirements in this part and CPG 1–3. If no changes are necessary, a State and the Regional Director may adopt in writing the State's primary annual submission as its final annual submission. If no award document was executed based on a State's primary annual submission, such document will be executed on the basis of that State's approved final annual submission.

(k) With regard to any State whose award document was executed pursuant to a primary annual submission covering only part of its formal allocation, upon approval (by the Regional Director) of the final annual submission (including a revised statement of work supporting the additional funding request) the Regional Director shall execute an amended award document obligating the balance of such State's formal allocation.

(l) In the event a State fails to provide an approvable final annual submission on time, the Director may reallocate that State's share of the funds or portions thereof, as appropriate among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(m) In addition, the Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

Dated: June 27, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85–15869 Filed 7–3–85; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 80–113]

Lifesaving Equipment; Improved Standards for the Stability of Inflatable Liferafts

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: On January 11, 1985 the Coast Guard published in the **Federal Register** a Notice of Proposed Rule Making dealing with requirements for improving the stability of the inflatable liferafts used aboard merchant vessels and drill rigs of U.S. registry (50 FR 1558). At the time the Coast Guard was not planning to conduct a public hearing. The Coast Guard, on the basis of several written comments, has determined that a public hearing is now desirable. In conjunction with the decision to hold the public

hearing scheduled below, the comment period is reopened and extended.

DATE: The Coast Guard will hold a public hearing on the above subject on Thursday, September 12, 1985, 9:30 a.m. to 12:00 noon, Washington, D.C. Attendance is open to the public. Persons wishing to present oral testimony at the hearing should notify the Executive Secretary of the Coast Guard Marine Safety Council no later than the day before the hearing. Written comments must be received by October 14, 1985.

ADDRESS: The public hearing will be held at U.S. Coast Guard Headquarters, Room 2415, 2100 Second Street SW., Washington, D.C. 20593. Written comments intended for presentation at the public hearing should be mailed or delivered to the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Captain C.M. Holland, Executive Secretary, Marine Safety Council (G-CMC/21), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, telephone (202) 426-1477.

B. G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-16027 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-192; FCC 85-303]

Radio and Television Broadcasting; Reexamination of the Single Majority Stockholder and Minority Incentive Provisions

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Federal Communications Commission initiates a rulemaking to explore the interaction between the "single majority stockholder" exception to its attribution standards and the "minority incentive" component of its national broadcast multiple ownership rule. Specifically, the Commission will consider whether or not a conflict exists in the simultaneous application of these two policies and, if so, what changes, if any, in either or both of these rules are appropriate.

DATES: Comments and reply comments should be submitted by August 7, 1985 and August 22, 1985, respectively.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Laurel R. Bergold, Mass Media Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Notice of Proposed Rulemaking

In the matter of reexamination of the "Single Majority Stockholder" and "Minority Incentive" provisions of § 73.3555 of the Commission's Rules and Regulations.

Adopted: June 7, 1985.

Released: July 1, 1985.

By the Commission: Commissioner Rivera issuing a separate statement; Commissioner Patrick concurring in the result.

1. By this *Notice of Proposed Rule Making* the Commission, acting on its own motion,[1] seeks comments concerning the interaction between the "single majority stockholder" exception to our ownership attribution standards [2] and the "minority incentive" provisions added to our national multiple ownership rules [3] pursuant to our recent order in the "twelve station" proceeding.[4] Specifically, we wish to determine whether and to what extent these two provisions, as now written, may operate at cross-purposes and what changes to such provisions might be warranted to remedy any conflict.

2. Through its attirbution policies, the Commission evaluates whether a specific type of interest conveys to the holder the ability to materially influence or control the business affairs of our licensees and, as a consequence, what ownership interests are counted in the application of the media multiple ownership rules. One component of these attribution policies is the "single majority stockholder" exception concerning corproations in which a single person owns more than fifty percent of the voting stock. The exception exempts from attribution the ownership interests of all non-majority stockholders,[5] regardless of whether or not such stockholder's ownership interest would otherwise be cognizable. The rationale underlying this exception is that the interest of the single majority stockholder is so great that "the [non-majority] interest holders, even acting collaboratively, would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings." [6]

3. Subsequent to the adoption of the "single majority stockholder" exception to the attribution policies, the Commission, announced its decision on reconsideration in the multiple ownership proceeding. In reconsidering its decision to relax the "seven station" rule and to permit an individual or single entity to hold a cognizable interest in up to twelve stations in each broadcast service, the Commission decided to include certain "minority incentives" in the new multiple ownership rules.[7] Specifically, in order to foster investment in minority-controlled broadcasting companies, we determined to permit group owners otherwise subject to the twelve station limit to:

> Utilize a maximum numerical cap of 14 stations provided that at least two of the stations in which they hold cognizable interests are minority controlled. Group owners having a cognizable interest in at least one minority controlled television or radio station may utilzie a maximum numerical cap of 13 stations.[8]

4. The Commission also created a comparable incentive with respect to the maximum national audience reach limitation on television station ownership added to the multiple ownership rules on reconsideration in the "twelve station" proceeding. Thus, while a person would generally be restricted from owning cognizable interests in television stations which, in the aggregate, could reach more than 25 percent of the national audience, this limitation was increased by five percent as long as any interest in excess of 25 percent can be directly attributed to

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[1] 47 CFR 1.411 (1984).

[2] *See* 47 CFR 73.3555, Note 2(b); § 76.501, Note 2(b) [1984]; and *Report and Order* in MM Docket No. 83-46, 97 FCC 2d 997, 1008-09 (1984), *reconsid. granted in part*, FCC 85-252 (released June 24, 1985).

[3] *Memorandum Opinion and Order* in Gen. Docket No. 83-1009, FCC 84-638 (released February 1, 1985) at Appendix A [to be codified at 47 CFR 73.3555(d)].

[4] *Memorandum Opinion and Order* in Gen. Docket No. 83-1009, *supra* n.3.

[5] In order to avoid confusion, we shall use the term "minority" herein to refer to a member or members of an identified minority group, such as Hispanics, and the term "non-majority" to refer to interest holders possessing less than a 50% ownership interest.

[6] *Report and Order* in MM Docket No. 83-46, *supra* n.a at 1008-09.

[7] *Report and Order* in Gen. Docket No. 83-1009, FCC 84-350 (released August 3, 1984), *reconsid. granted in part*, FCC 84-638 (released February 1, 1985), *appeal docketed sub nom. National Association of Black Owned Broadcasters v. FCC*, No. 85.1139 (D.C. Cir. filed March 4, 1985).

[8] *Memorandum Opinion and Order* in Gen. Docket No. 83-1009, *supra* n.3 at para. 45.

minority-controlled stations.[9] For purposes of these provisions, "minority-controlled" broadcast stations are defined as those in which more than 50 percent of the equity interest is owned in the aggregate by persons who are members of a minority group.[10]

5. Our intention, of course, in permitting increased levels of multiple ownership only where minority-controlled stations are involved is to encourage investment in and support for these stations, thereby advancing our broad policy objective of promoting minority ownership of broadcasting facilities.[11] It has been suggested, however, that in practice the availability of the "single majority stockholder" exception may potentially operate to dilute the effectiveness of the minority incentives by significantly reducing the number of cases where they might be attractive for use in the financing of a broadcast enterprise.[12] Our concern in this regard is heightened by the fact that, in some respects, the "single majority stockholder" exception is broader than the "minority incentive" provisions and may, therefore, be more attractive to investors. For example, because the exception operates as a total exemption from attribution, it permits a person investing in companies that have a single majority stockholder to obtain significant interests in broadcast stations without regard to any numerical or audience reach limitations. Moreover, the scope of the exception extends to all of the media multiple ownership rules; it is not limited to the national ownership rules adopted in the "twelve station" proceeding. Finally, in utilizing the "single majority stockholder" exception, there are no restrictions on the types of persons holding the majority interest.

6. On the other hand, several characteristics of the "single majority stockholder" exception restrict its usefulness in comparision to the "minority incentive" provisions for certain purposes and under various conditions. In this regard, we note that there are certain types of investments which may qualify for preferential treatment under the "minority incentive" rule but fail to meet the criteria for an absolute exclusion from attribution under the "single majority stockholder" rule. For example, a person seeking to invest in a non-corporate business entity cannot take advantage of the "single majority stockholder" exception because that exclusion, by its express terms, applies only to corporate ownership interests. In addition, the "single majority stockholder" exception is limited to situations in which more than 50 percent of the voting stock is owned by a single person. Under the "minority incentive" policy, in contrast, ownership interests of minority group owners are aggregated in computing control and, consequently, there is no requirement that any one person possess an equity interest in the business that exceeds 50 percent.

7. More importantly, the "single majority stockholder" exception is limited to ownership interests. As a consequence, our rules attribute the interest of a non-majority stockholder who would otherwise qualify for an exemption under the "single majority stockholder" rule when that stockholder occupies a position within the corporate structure that is cognizable independent of any equity holdings. For example, notwithstanding the existence of the "single majority stockholder" exception, the interest of a person who both holds a non-majority ownership interest in a company with a single majority stockholder and occupies the position of a corporate officer or director is cognizable. In contrast, the relaxed numerical and audience reach caps of the "minority incentive" rules are available to a person investing in minority-controlled enterprises even if he or she is also a corporate officer or director. Therefore, relative to use of the "single majority stockholder" rule, an investment in a minority-controlled company may be attractive to persons occupying—or desiring to retain the option to occupy—cognizable corporate positions. This aspect of the "minority incentive" provisons may constitute a substantial advantage over the "single majority stockholder" approach in the view of significant investors because it affords them a means short of majority stock control by which to ensure the continued viability of their investment.

8. To the extent that an investment meets the criteria for the less restrictive limitations contained in the "minority incentive" program but does not qualify for a "single majority stockholder" exception, the policy underlying the adoption of specific minority incentives in the "twelve station" proceeding may be effectuated without any alteration of our existing rules. Given the foregoing considerations, we are not prepared at this time to make a determination that the "single majority stockholder" exception, as applied to the national broadcast media multiple ownership rules, appreciably undercuts our "minority incentive" provisions. We believe it is appropriate, however, to seek comments concerning this possibility.

9. In evaluating the interrelationship of these two provisions and in fashioning possible remedies for any real conflict between them, several additional considerations should be noted. First, traditionally it has not been the purpose of the attribution rules to facilitate minority ownership of broadcast facilities. Rather, the purpose of these rules is to establish a regulatory line of demarcation between those interests which could confer upon their owner the ability to materially influence or control the licensee's editorial decisions and consequently should be deemed cognizable under the media multiple ownership rules and those interests which are non-influential in nature and therefore are appropriately exempt from attribution. The adoption of the "single majority stockholder" exception reflects a neutral determination by the Commission that the stockholders that qualify for this exception do not in fact possess an influential ownership interest which should be deemed cognizable under the media multiple ownership rules.[13] There is nothing either in our experience with this exception or in our decision to revise the national multiple ownership rules in the "twelve station" proceeding which would lead us to question this determination. To the extent, therefore, that narrowing or eliminating the "single majority stockholder" exception suggests itself as a solution in this proceeding, such an approach would result in the attribution of non-influential ownership interests and would arguably be at odds with the objectives underlying the attribution rules.[14]

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[9] *Id.* at App. A [to be codified at 47 CFR 73.3555(d)(2)]. Minority group members are persons who are Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander. *Id.* at App. A [to be codified at 47 CFR 73.3555(d)(3)(D)].

[10] *Id.* at App. A [to be codified at 47 CFR 73.3555(d)(3)(C)].

[11] *See, e.g., Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978); *Policy Statement and Notice of Proposed Rule Making* in Gen. Docket No. 82-797, 92 FCC 2d 849 (1982).

[12] We recognized this potential conflict at the time we adopted the minority incentive provisions in the "twelve station" proceeding. As a result, we specifically instructed the staff to prepare this *Notice of Proposed Rule Making* to examine the relationship between the minority ownership incentives and the "single majority stockholder" exception. *See Report and Order* in Gen. Docket No. 83-1009, *supra* n.6 at n.60.

[13] *Report and Order* in MM Docket No. 83-46, 97 FCC 2d at 1008-09.

[14] Any limitation on the scope or availability of the "single majority stockholder" exception imposed as a result of this proceeding would be prospective only. The interests of investors relying on the exception prior to any possible modification thereof would remain noncognizable for purposes of our multiple ownership rules.

10. Furthermore, we note that this proceeding only addresses the "single majority stockholder" exception as it applies to the rules adopted in the "twelve station" proceeding and, consequently, any changes to that attribution standard which we might adopt in this proceeding would of necessity result in disparate attribution standards for the national and local media multiple ownership rules.[15] In our *Report and Order* in the attribution proceeding, we determined, as a policy matter, that the same attribution standards should be applicable to all media multiple ownership rules. We explained that these rules:

> Are designed to prevent any party from influencing the broadcasting practice of more than a predetermined number of outlets in various geographic configurations. The attribution standards, in turn, are designed to measure what ownership interests will confer that amount of influence or control which must be limited. The determination that a certain stock interest or other position might confer such influence or control is equally valid regardless of the particular context of rule in which it is applied.[16]

11. By the institution of this rule making, we invite parties to comment on all matters raised in this *Notice*. We specifically request persons, however, to provide their views on the following issues:

(1) Whether the "single majority stockholder" rule, in operation, substantially affects the efficacy of the "minority incentives" established in the "twelve station" proceeding; and

(2) If the availability of the "single majority stockholder" exception does in fact appreciably undermine effective implementation of the current "minority incentive" provisions, what changes to either or both of these provisions are advisable.[17]

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 7, 1985, and reply comments on or before August 22, 1985. All relevant and timely comments will be considered by the Commission before any final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and any supporting documents. If participants want each Commissioner to receive a personal copy of their pleadings, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Docket Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral argument) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written pleading in the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must state by docket number the proceeding to which its relates. *See generally*, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

14. As prescribed by the Regulatory Flexibility Act,[18] an initial regulatory flexibility analysis ("IRFA"), set forth in the attached Appendix, outlines the expected impact of the proposals described in this *Notice* on small entities. We invite parties to this proceeding to submit written comments on the IRFA. These comments are to be filed in accordance with the same filing deadlines as the comments on the substantive aspects of this *Notice*. A party may file comments on the IRFA and the other matters raised by the *Notice* in the same document, but any person availing himself or herself of this option must place the IRFA response under a separate heading. The Secretary shall cause a copy of this *Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.[19]

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

16. Authority for this proposed rule making is contained in sections 1, 4(i) and (j), 303 and 403 of the Communications Act of 1934, as amended.

17. For further information concerning this proceeding, contact Laurel R. Bergold, Mass Media Bureau, (202) 632-7792.

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[15] Moreover, we have indicated that the local media ownership rules are the primary vehicle by which we address the concerns of diversity and economic concentration in an ownership context. *See, e.g., Report and Order* in MM Docket No. 84-19, 98 FCC 2d 578 *reconsid. denied*, FCC 85-225 (released May 8, 1985), *appeal docketed sub nom. National Association for Better Broadcasting v. FCC*, No. 84-1274 (D.C. Cir. filed June 29, 1984) at paras. 20-22. In fact, although we have retained a national broadcast multiple ownership rule to avoid the possibility of an abrupt and disruptive restructuring of the broadcasting indsstry, we have concluded, as a policy matter, that there is no need to retain a presumptive national multiple ownership rule. *See Memorandum Opinion and Order* in Gen. Docket No. 83-1009, *supra* n.3. at para. 50. Yet, if we determine to eliminate the "single majority stockholder" rule as applied to the national multiple ownership rule, we will have the arguably anomalous situation of less stringent attribution standards for the vitally important local multiple ownership rules than are applied to their less important national counterpart.

[16] *Report and Order* in MM Docket No. 83-46, 97 FCC 2d at 1032-33.

[17] In addressing this issue, we invite parties to comment upon the factors which we should consider in balancing our objective of effectively advancing our minority ownership policies against our interest in maintaining rational and uniform attribution criteria, and the relative weight we should assign to each factor. In striking this balance, commenters should bear in mind that we do not consider the multiple ownership rules to comprise the primary means by which the Commission undertakes to further its minority ownership objectives. As we stated in adopting the "minority incentive" provisions:

> In the *Report and Order*, we observed that the national multiple ownership rules were not primarily intended to function as a vehicle for promoting minority ownership in broadcasting. In this regard, we noted that the Commission has instituted various policies such as tax certificates, distress sale benefits and lottery preferences to promote minority ownership in communications. We continue to believe that these policies, as opposed to our multiple ownership rules, should serve as the primary mechanisms to promote minority ownership in television and radio broadcasting.

Memorandum Opinion and Order in Gen. Docket No. 83-1009, *supra* n.3 at para. 45 [footnote omitted].

[18] 5 U.S.C. 601 *et seq.* (1982).

[19] 5 U.S.C. 603(a) (1982).

Federal Communications Commission.[1]
William J. Tricarico,
Secretary.

Appendix

Initial Regulatory Fexibility Analysis

1. *Reason that Action Is Contemplated.* The Commission is concerned that the existance of the "single majority stockholder" exception in the attribution rules (47 CFR 73.3555) may have the potential to dilute the specific incentives designed to facilitate the minority ownership of broadcast facilities adopted in *Memorandum Opinion and Order* in Gen. Docket No. 83–1009, FCC 85–175 (released February 1, 1985). As a consequence, the Commission deems it appropriate to explore the interaction between these "minority incentives" and the "single majority stockholder" exception.

2. *Objective of the Proposed Rule and the Legal Basis Therefor.* The dual objectives in this proceeding are to assure the effective implementation of the minority incentive program adopted in Gen. Docket No. 83–1009 while maintaining a viable mechanism for the attribution of interests in the application of the media multiple ownership rules. The legal basis for the institution of this rule making is contained in section 1, 4(i) and 4(j), 303, and 403 of the Communications Act of 1984, as amended.

3. *Description, Potential Impact and Number of Small Entities Affected.* The rule changes considered in this rule making could modify in one respect the attribution standards governing broadcast licensees and those holding significant interests in such licensees as these standards are applied to the national broadcast multiple ownership rules. In addition, they could alter the minority incentives to the national multiple ownership rule adopted in Gen. Docket No. 83–1009. Many of the current and prospective minority-controlled broadcast licensees are small entities. The minority incentive program facilitates investment in minority-controlled small businesses. To the extent that the viabilty of the minority incentive program is enhanced as a result of any rule changes adopted in this proceeding, minority-controlled small entities will have increased opportunities for investment capital which, in turn, will enhance their financial viability.

4. *Recording, Recordkeeping and Other Compliance Requirements.* To the extent that the rules adopted in this proceeding restrict or eliminate the "single majority stockholder" exception, the reporting burden of those entities no longer exempt from attribution would increase thereby creating a corresponding increase in the reports filed with the Commission.

5. *Federal Rules which Overlap, Duplicate or Conflict with This Proposal.* None.

6. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with the Stated Objectives.* None.

Separate Statement of Commissioner Henry M. Rivera

June 7, 1985.

Re: Notice of Proposed Rulemaking Reexamining Single Majority Stockholder and Minority Incentive Provisions of Rule § 73.3555

I am pleased that the Commission has begun this rulemaking. The minority ownership incentive adopted by the Commission's 12 station reconsideration decision [1] can give a much-needed boost to the flagging involvement of minorities in broadcasting. That was certainly our intent in adopting the incentive (as well as the intent of the House and Senate legislative proposals on which the December 1984 reconsideration was based). As this Notice of Proposed Rulemaking explains, however, our attribution rules—specifically, the single majority stockholder provision—may indirectly undermine or defeat this minority incentive. To avoid taking away with the attribution rules what the Commission intended to give with the 12 station reconsideration order, it is essential that we examine the interplay of these rules.[2]

The Notice has described the potential conflict between these rules. Both provisions relieve holders of 49 percent interests in broadcast licenses from our multiple ownership rules. Unlike the minority ownership incentive, however, the single majority stockholder rule does not limit who may hold the remaining 51 percent interest to minority group members. In addition, the single majority stockholder rule can be used to avoid *any* broadcast multiple ownership restriction and to acquire large interests in an unlimited number of properties, while the minority incentive applies only to the 12 station rule, and only allows parties to acquire two stations of five percent viewers penetration more than the limits contained in that rule. The minority incentive does have some advantages over the single majority stockholder rule—for example, it exempts officers and directors from attribution where its standards are otherwise met. Nevertheless, the relief provided by the single majority stockholder rule to broadcast investors is significant and, in some ways, far superior to that offered by the majority ownership provision. Consequently, there is a substantial question as to whether the minority ownership incentive will provide the positive inducement the Commission intended unless one or both of these rules is modified.

If the comments confirm these tentative views, the Commission has a number of options for remedial action. Deleting the single majority stockholder rule is the most obvious solution. The provision was adopted by the Commission on its own motion, with only a cursory rationale.[3] It is far from integral to the new attribution scheme adopted last year.[4] Its repeal would be a small price to pay for preserving the integrity and promise of our new minority ownership initiative. Alternatively, it may be possible to revise the minority incentive to make it more attractive to those seeking relief from our multiple ownership rules. Whatever the proper course, I am satisfied that this proceeding gives us the necessary vehicle for corrective action.

[FR Doc. 85–16034 Filed 7–3–85; 8:45 am]
BILLING CODE 6712–01–M

[1] *Memorandum Opinion and Order* in General Docket No. 83–1009, FCC 84–638 (released Feb. 1, 1985).

[2] *See id.* at note 60 and Separate Statement of Commissioner Henry M. Rivera Concurring in Part, Dissenting in Part, at nn. 17–19 and accompanying text.

[3] *Attribution of Ownership Interests*, 97 FCC 2d 997, 1006–09 (1984).

[4] *See id.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–18; Notice 3]

Federal Motor Vehicle Safety Standards; Anchorages for Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates rulemaking action to require the installation of child restraint tether anchorages in vehicles. The agency proposed the tether anchorage requirement to reduce the widespread misuse of tethered child restraints resulting from parents failing to attach

the tether to the vehicle. Subsequent to issuance of that notice, in approximately 50 percent of all domestic and imported cars, manufacturers have voluntarily installed provisions for tether straps. In addition, there has been a substantial shift in the marketplace away from tethered restraints. At present, only booster seats and one model of the plastic shell-type of child restraint currently use a tether.

The agency has decided that the appropriate way to reduce problems created by tether misuse is to propose an amendment, published elsewhere in today's **Federal Register**, to Standard No. 213, *Child Restraint Systems*, to require all child restraints to pass a 30 mile per hour simulated crash test without a tether attached. This will ensure that all child restraints provide an adequate level of safety even if they are designed to be used with a tether strap.

This action does not terminate the other portion of the Standard No. 210 proposal concerning the installation of anchorages at the right front passenger seating position in vehicles with automatic restraint systems, which will be addressed further by the agency at another time.

DATES: The termination of the tether anchorage rulemaking is effective on July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Telephone (202) 426-2264.

SUPPLEMENTARY INFORMATION: On December 11, 1980 (45 FR 81625), NHTSA issued a notice of proposed rulemaking to amend Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210) to require anchorages in certain vehicles for child restraint tether straps. In addition, the notice proposed requiring vehicles equipped with automatic restraint systems at the right front designated seating position, which can not be used for the securing of child restraints, to have separate anchorages at that position for the installation of Type 1 lap belts.

There were over seventy comments responding to the notice, representing a diverse range of views concerning the need for and the probable effectiveness of both the proposed lap belt and tether anchorages. The following discussion addresses the major comments and explains the agency decision concerning the tether anchorage proposal. The agency will subsequently issue a separate notice addressing the safety belt anchorage proposal.

Termination of Tether Anchorage Proposal

The purpose of the tether anchorage proposal was to encourage tether strap use by making it possible for motorists to attach easily the tether straps on their child restraint systems to their vehicle. There was a substantial disagreement among the parties submitting comments on the tether anchorage proposal. Of the individuals and organizations commenting on the proposal, 55 supported the need for such anchorages, although some of these commenters recommended changes in such items as the anchorage strength, location, hardware, and configuration requirements. Six commenters, however, opposed any tether anchorage requirement, arguing that the agency had not established a need for such anchorages and the probable low rate of use of tether straps does not justify the cost of the proposed requirement.

Since issuance of the proposal, there have been several significant events that have taken place that have led the agency to re-evaluate the need for a tether anchorage requirement. Since 1980, there has been a continual shift in the child restraint market toward untethered seats. At the present time, there are approximately two million shell-type child restraints produced annually; only one model of those restraints requires a tether to comply with the requirements of Standard No. 213, *Child Restraint Systems*. (Two manufacturers of shell-type child restraints are now offering a tether strap on some child restraints as an option for added safety; however, those restraints comply with Standard No. 213 without the use of the tethers.) There are also approximately 1.2 million booster seats currently sold, with about ⅓ of those seats now designed to comply with Standard No. 213 without the use of a tether; the remaining booster seats currently require the use of a tether to comply. The agency notes that at the time of this proposal all booster seats required a tether.

In addition, motor vehicle manufacturers have increasingly been voluntarily providing provisions, such as indentations to identify anchorage points and pre-drilled or threaded holes, in their vehicles to facilitate the attachment of tether straps. At present, American Motors, Chrysler, Ford, General Motors, Honda, Nissan, and Toyota offer some type of provision in some of their vehicles for installation of tether anchorages. The number of passenger cars with provisions for tether straps now accounts for approximately one half of all U.S. and imported car sales. The agency encourages all manufacturers to provide tether anchorages in all their vehicles used for the transportation of children.

Finally, the Society of Automotive Engineers (SAE) is actively engaged in developing a voluntary industry recommended practice for child restraint tether anchorages. The agency has provided SAE with relevant test data for use in developing its standard.

With the movement away from tethered child restraints and the increased voluntary provision of tether anchorages by vehicle manufacturers, the agency believes that there is not a need for a Federal motor vehicle safety standard to require tether anchorages. At the same time, the agency recognizes that the failure to attach tether straps continues to be a major misuse problem with child restraints that require them. After considering the most effective ways to promote child safety, the agency has decided to propose amending Standard No. 213 to require all child restraints to meet the performance requirements of the standard in a 30 mile per hour crash test without the use of tethers. Manufacturers could still provide tethers for use with their restraints to provide additional protection. A separate notice in today's **Federal Register** fully discusses the agency's reasons for the proposed amendment. The agency believes that the overall safety benefits derived from eliminating the need for tethers are greater than the potential benefits from requiring the installation of tether anchorages in motor vehicles, and the benefits to be realized from today's proposal are more certain to be achieved than those speculative benefits associated with a rule requiring installation of tether anchorage hardware.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on June 28, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-15987 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 74-09; Notice 17]

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 213, *Child restraint systems*, by requiring those child restraints equipped with a tether strap to pass the 30 mile per hour (mph) test without attaching the tether strap, and by eliminating the requirement that tethered restraints be subjected to the 20 mph test. Currently, all child restraints are tested in a 30 mph test while the test dummy is restrained in the child restraint and while the restraint is attached to the test vehicle seat in accordance with the child restraint manufacturer's instructions. In the case of restraints with tether straps, those tethers are secured to the vehicle seat in accordance with the manufacturer's instructions. Child restraints with tether straps or fixed or movable surfaces that help to restrain the occupant's forward movement in the event of a crash are also tested in a 20 mph test. In that second test, child restraints with tether straps are tested while attached to the test vehicle seat only by a vehicle lap belt and child restraints with such fixed or movable surfaces are tested with the test dummy unrestrained by any belts by the child restraint.

The purpose of the second test is to ensure that a minimum level of safety is provided by child restraints which have safety features likely to be misused or unused by some owners.

The proposal to require tethered restraints to pass the 30 mph test without attaching the tethers is based on consistent survey results showing that child restraints equipped with a tether strap continue to be used in most instances without the tether strap being attached to the vehicle. This means that a child riding in the restraint with the tether strap unattached may not be as safe in the event of a crash as is a child riding in a restraint which can provide 30 mph crash protection without the use of a tether strap. NHTSA has established that the minimum level of safety to be afforded by child seats is protection in a 30 mph frontal crash, and has permitted the two-tier testing for tethered seats only on the assumption that the tether straps would generally be attached. Now that the agency has collected extensive data showing that tethers are rarely attached properly, the agency now believes that this amendment is necessary to ensure that children riding in child restraints with unattached tethers will be provided crash protection at least as good as that provided by seats designed without a tether. To ensure that tethered restraints can provide this level of protection in the manner they are actually used by the public, this notice proposes that tethered restraints be tested in a 30 mph crash with the tether strap unattached.

The proposal to exempt tethered restraints from the 20 mph test is based on this agency's desire to avoid unnecessary testing requirements. If tethered restraints are required to pass the 30 mph test without attaching the tethers, this proposal assumes that they could also pass the less severe 20 mph test under the same conditions. Since the 20 mph test would simply be a less severe test for the tethered restraints, this notice proposes that tethered restraints no longer be subject to the 20 mph test.

Additionally, this notice proposes to amend the test procedures of Standard No. 213 to specify that child restraints being tested for compliance shall be mounted in an outboard seating position, instead of the currently specified center seating position. Many newer vehicles have only one passenger seating position in the front and only two in the rear. All of these positions are outboard. Thus, the current testing from the center seating position is not representative of the way child restraints will be positioned in many vehicles. This amendment would also make the testing more economical since the placing of child restraints in each outboard seating position means that two child restraints could be evaluated in each test.

DATES: *Effective date:* This rule would become effective 180 days after a final rule is published in the **Federal Register**.

Comment closing date: Comments on this notice must be received by the agency on or before August 19, 1985.

ADDRESS: Comments on this notice must refer to Docket No. 74–09, Notice 17 and should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, D.C. 20590. Docket hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, (202–426–2264).

SUPPLEMENTARY INFORMATION: Standard No. 213, *Child restraint systems*, currently provides two test configurations applicable to child restraints. First, a 30 mph frontal crash test is conducted for all child restraints. In that test, the restraints are installed according to the child restraint manufacturer's instructions for installing the restraints in a motor vehicle. This is test configuration I in section S6.1.2.1.1 of Standard No. 213.

Second, a 20 mph test is conducted for two types of restraints. One is a child restraint equipped with an anchorage belt. Anchorage belts, more commonly referred to as tether straps, are supplemental belts used to attach the child restraint to the vehicle. The other type is a restraint with a fixed or movable surface which helps to restrain the child's forward movement in the event of a crash. This type of child restraint provides protection by use of its own belt system and a shield which can be used independently. These two types of child restraints are tested with only a standard vehicle lap belt holding the child restraint to the vehicle seat and without holding the test dummy in place by means of the restraint's belt system. This test, called test configuration II in section S6.1.2.1.2 of Standard No. 213, is intended to take into account the possible misuse or nonuse of the tether strap and the restraint's own belt system by ensuring that these two types of child restraints offer some minimal level of protection even when they are not properly used.

The improper use of child restraints equiped with tether straps has been a very difficult problem. When the tether strap is attached properly, these child restraints generally offer the best protection for child occupants, particularly for children sitting in the front seat and for children involved in side impacts. Agency testing has also shown that tethered restraints with the tethers attached generally allow less occupant excursion and lower head and chest accelerations than untethered restraints in 30 mph frontal crashes.

However, those restraints which are not equipped with a tether strap generally offer better protection than do tethered restraints when the tethers are not attached properly to the vehicle. The information available to NHTSA indicates that tether straps are usually not attached when the child restraints are used by the public. The most recent study done for the agency on this topic (Cynecki and Goryl, "The Incidence and Factors Associated with Child Safety Seat Misuse", December 1984, DOT HS–806 676) found that nearly 85 percent of the observed toddler child restraints with tethers did not have the tether strap attached, and 62 percent of booster seats did not have the tether attached. The study recommended that the best solution for this problem would be to redesign the restraints and seats to eliminate the need for tether straps.

This situation is not new; that is, the type of restraint which offers the

greatest protection when used properly is rarely used in that fashion. Moreover, the recommendation in the Cynecki and Goryl report that tethered child restraints be redesigned to eliminate the need for tethers is not new. NHTSA published a final rule substantially upgrading the performance requirements for child restraints at 44 FR 72131, December 13, 1979. A number of commenters to the proposal which preceded that final rule stated that, since most people do not attach the tether straps, tethered restraints should be tested in the 30 mph frontal crash with an unattached tether strap. It was argued that this would ensure that tethered child restraints would offer the same level of safety protection as do untethered restraints when tested in the way both types of restraints would be used, that is, attached to the vehicle by means of a lap belt only.

At the time of that rulemaking, however, over 70 percent of child restraint sales were tethered restraints. Since public awareness of the importance of using child restraints was growing, but not nearly as large as it is today, it seemed inappropriate to issue a rule which would have the effect of requiring the redesign of most child restraints then on the market. Further, as noted above, properly used tethered restraints offered the greatest possible protection to the occupants of child restraints. NHTSA expected at that time that as public knowledge and awareness of child restraints grew, proper use of tethered restraints would also grow.

The premises for not adopting a more stringent test in 1979 are no longer valid. First, the expectation of increased proper use has not been realized. Surveys conducted for the agency since 1979 have consistently shown that tethered restraints do not have the tether strap attached more than 80 percent of the time. Even more troublesome is the fact that 78 percent of persons not using the tether strap *knew that its use was necessary* (see the Cynecki and Goryl report cited earlier). More than three-fourths of persons not attaching tether straps know that such attachment is necessary for their child's protection but still do not attach the tethers. In the face of this, NHTSA no longer has a basis for maintaining its previous position that tether use will increase as knowledge of the need for such use increases.

Second, the proportion of new child restraints equipped with tether straps has declined dramatically. At present, only one out of 26 child seat models (less than one percent of child seat production) and 6 of 9 booster seat designs in production (about 67 percent of current production) use tether straps. Thus, the impact on the child restraint market will be substantially less.

In these circumstances, NHTSA has reexamined whether it is still reasonable to allow tethered restraints to be tested in only a 20 mph crash in the way they are used by most of the public while requiring untethered restraints to be tested in a 30 mph crash in the way they are typically used. As noted above, these differing requirements have resulted in untethered restraints offering better protection for child occupants than tethered restraints with the tether unattached. As a result of the agency's reexamination of this question and its desire to ensure that all child restraints can properly protect children in the event of a crash, this notice proposes that all restraints be tested in test configuration I when attached to the standard vehicle seat using only the standard seat lap belt. The effect of this proposal would be to require that tethered restraints afford the same level of protection to child restraint occupants as do untethered restraints in the manner both are used by the public, i.e., without attaching any tether straps.

Under this proposal, a tether strap would become a supplementary safety device for maximum protection of the child occupant in the restraint, instead of a necessary device for adequate protection. Given the proven increased protection afforded by attached tethers, the agency has no intention of interfering with the practice, currently followed in the case of at least two models of child seats, of offering tether straps as an option for extra protection. But, given the low level of tether strap use and the high level of awareness that those straps must be used, the agency does not believe that tether straps can continue to be permitted as a device necessary for adequate protection of children.

As an adjunct to this proposal to require all types of child restraints to satisfy the criteria of test configuration I when secured to the vehicle seat only by means of a lap belt, this notice proposes to amend test configuration II so that it applies only to restraints with fixed or movable surfaces in front of the child. This proposal is based on the fact that tethered restraints would now be subject to a 30 mph crash with the tether unattached. If those restraints can pass that test, they would presumably pass a 20 mph test with the tether unattached. Hence, there is no reason to require duplicative testing under less severe conditions.

The proposed elimination of a 20 mph test with the tether strap unattached is based on the apparent redundancy of this less stringent test. However, the proposed requirement that tethered child seats will have to pass only the 30 mph test with the tethers unattached could theoretically result in situations where the restraint might allow excessive occupant submarining when the upper portion of the restraint and/or the upper body of the child is restrained by tethers. NHTSA specifically requests comments as to whether this situation could occur for tethered seats and whether an additional 30 mph compliance test with the tethers properly attached should continue to be required for tethered restraints. Tests or other data are requested from the public.

Adoption of this proposal requiring tethered restraints to satisfy the criteria of test configuration I without attaching the tether strap would have differing impacts on the different types of child restraints, i.e., child seats, booster seats, and child harnesses. For child seats, only one model currently in production uses a tether strap to pass the requirements of the 30 mph crash test. A child seat is a restraint that uses a plastic shell around the child, and has a shield, belts or the like also attached to the shell in order to restrain the child in the event of a crash. All but the one model of child seat noted above are now untethered, although two models offer tether straps as an option for extra protection. The preliminary data available to the agency suggests that the one child seat model which currently uses a tether strap to satisfy the test configuration I criteria would have to be redesigned if this proposal were adopted as a final rule.

Booster seats are generally platforms used to elevate older children in the vehicle so that the child can see out of the vehicle and so that the child can safely use the existing vehicle belt system or a special harness that comes with a booster seat. About two-thirds of the current total production of booster seats use a tether strap in order to pass test configuration I requirements, and would probably have to be redesigned to pass the 30 mph test without attaching a tether strap. However, such a redesign would be feasible as is shown by the one-third of current production booster seats which do not need a tether strap to pass the 30 mph crash test.

This proposal would not affect the way in which child harnesses are tested. Child harnesses are harnesses which are attached to a child and then anchored to the vehicle by means of a tether strap.

These restraints were more popular several years ago, and only one model of child harness is currently in production. These restraints are tested in test configuration I (the 30 mph test) with the tether strap properly secured, and are the only tethered restraints not required to be subjected to test configuration II without attaching the tether. The reason for this differing treatment is the agency's opinion that it would be obvious to users of child harnesses that if the tether were not attached, the child would be completely unrestrained in the event of a crash. Hence, the potential for misuse of these tethered restraints seems to be significantly less.

The agency's data on the non-use and misuse of tether straps did not study the extent to which the tethers are improperly used on child harnesses. Therefore, NHTSA has no basis for amending the test procedures applicable to child harnesses at this time. The agency may address this topic in a future rulemaking action, if there are data which show non-use and misuse of tethers on child harnesses.

This proposal would also make some less significant changes to the standard. The test procedures for test configurations I and II require that the child restraint being evaluated be installed at the center seating position. However, the number of new vehicles being produced without a front or rear center seating position is steadily growing. This trend means that the test procedures are increasingly less representative of the conditions which will likely be encountered in actual use. Further, if the standard were amended to specify testing at the outboard seating positions, two child restraints could be evaluated in the same test. The current requirement to use the center seating position permits only one child restraint to be evaluated in each test. Hence, a change to specify the use of the outboard seating positions could reduce somewhat the testing costs for both the agency and the child restraint manufacturers. This notice proposes that such a change be made.

These proposed amendments would necessitate some corresponding changes to the labeling requirements in S5.5 and the installation instructions in S5.6. Currently S5.5.2(j) requires that all restraints equipped with a tether strap be labelled with the direction that the tether strap be secured as specified in the manufacturer's instructions. To encourage the continued use of a supplementary tether strap, even though it is not necessary for compliance purposes, this notice proposes that the phrase "For extra protection in frontal and side impacts" be added to the beginning of those instructions. This change would affirm the extra safety value of a tethered restraint with the tether attached, while also conveying the fact that the tether strap is just a supplementary safety device.

Section S5.6.1 requires the installation instructions provided by the child restraint manufacturers to state that, in most vehicles, the rear center seating position is the safest seating position for installing a child restraint. This has resulted in numerous inquiries to the agency by consumers wanting to know the safest seating position in cars with only two rear seating positions. To eliminate this confusion, this notice proposes that the instructions be modified to state that, for maximum safety protection, the child restraint system should be placed in a rear seating position in a vehicle with two rear seats and in the center rear seating position in a vehicle with three rear seats.

Finally, the agency has received many queries in the past year from child restraint and automobile manufacturers and safety groups regarding the meaning of section S5.6.2. That section requires the installation instructions to "specify in general terms the types of vehicles, seating positions, and vehicle lap belts with which the system can or cannot be used". This has been erroneously interpreted as requiring child restraint manufacturers to state the specific vehicles and the specific seating positions and specific vehicle lap belts with which the child restraint can or cannot be used.The agency's intent was that the installation instructions specify the *types* of vehicles (e.g., passenger cars, pickup trucks, vans, buses, etc.), the *types* of seating positions (e.g., front, rear, bench, folding, bucket, side facing, rear facing, etc.) and the *types* of vehicle lap belts (e.g., diagonal, lap-shoulder, emergency locking, etc.). To clarify this intent, the language of S5.6.2 is proposed to be amended.

Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is not "major" within the meaning of Executive Order 12291. It is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the high level of public and Congressional interest. If adopted, the proposal to require tethered restraints to pass the 30 mph test without attaching the tether strap might well require a redesign of those restraints. Such a redesign would impose additional costs on the purchasers of those restraints of between two and six dollars per restraint, for a total additional consumer cost of between $1.6 million and $4.9 million. The costs for child restraint manufacturers would be somewhat lower than the consumer costs. These costs would be partially offset by a reduction of testing costs for child restraint manufacturers, estimated at $2000 for each child restraint model, as a result of the proposed exemption of tethered restraints from the 20 mph test. These figures are well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order. NHTSA estimates that the more stringent requirements for tethered restraints would prevent at least 54 injuries annually under the current child restraint usage rates. A preliminary regulatory evaluation regarding these impacts has been prepared and placed in Docket No. 74-09; Notice 17. A copy of this evaluation may be obtained free of charge by any interested person by writing the Docket Section at the address given at the beginning of this notice or by calling the Docket Section at (202) 426-2768.

The agency has also considered the impacts of this proposed action on small entities, as required by the Regulatory Flexibility Act. I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. Three of the manufacturers of restraints which currently use tethers to pass the 30 mph test may qualify as small businesses. The redesign costs for these models could result in price increases as small as two dollars per restraint or as large as six dollars per restraint. However, even with these higher prices, these models would still be priced competitively with the restraints of other manufacturers which do not use a tether strap to pass the 30 mph test. Thus, the effect of the proposed action would not be significant. These impacts are detailed in the preliminary regulatory flexibility analysis included in the preliminary regulatory evaluation.

Finally, the NHTSA has considered the environmental implications of this proposal in accordance with the National Environmental Policy Act and determined that it would not significantly affect the human environment if it were adopted as a final rule.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR

553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.213, *Child restraint systems*, be amended to read as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. S5.5.2(j) would be revised to read as follows:

S5.5 *Labeling.*

* * * * *

S5.5.2 The information specified in paragraphs (a) through (l) of this section shall be stated in the English language and lettered in letters and numerals that are not smaller than 10 point type and are on a contrasting background.

* * * * *

(j) In the case of each child restraint system equipped with an anchorage strap, the statement:

FOR EXTRA PROTECTION IN FRONTAL AND SIDE IMPACTS, SECURE THE TOP ANCHORAGE STRAP PROVIDED WITH THIS CHILD RESTRAINT AS SPECIFIED IN THE MANUFACTURER'S INSTRUCTIONS.

* * * * *

3. S5.6.1 would be revised to read as follows:

S5.6.1 The instructions shall state that, for maximum safety protection, child restraint systems should be installed in a rear seating position in vehicles with two rear seating positions and in the center rear seating position in vehicles with such a seating position.

4. S5.6.2 would be revised to read as follows:

S5.6.2 The instructions shall specify in general terms the types of vehicles, types of seating positions, and types of vehicle lap belts with which the system can or cannot be used.

5. S6.1.2.1 would be revised to read as follows:

S6.1.2.1 *Test configuration.*

S6.1.2.1.1. *Test configuration I.* In the case of each child restraint system other than a child harness, install a new child restraint system at an outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system in accordance with S5.6, except that the restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness shall be installed at an outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system in accordance with S5.6.

S6.1.2.1.2. *Test configuration II.* In the case of each child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, install a new child restraint system at an outboard seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

Issued on June 28, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-15986 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Two Petitions, and of Review of Three Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and review.

SUMMARY: The Service announces findings that a petition to determine endangered status for the Samoan fruit bat and that a petition to determine endangered status for the Puerto Rican crested toad, Caribbean coot, West Indian ruddy duck, and West Indian whistling duck have presented substantial information indicating that such action may be warranted. The Service also announces reviews of the status of the Samoan fruit bat, Caribbean coot, and West Indian ruddy duck.

DATE: Relevant information or comments may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Asssociate Director—Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires the Service to make a finding on whether a petition to add a species to the Lists of Endangered and Threatened Wildlife and Plants, or to remove or reclassify a species, presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, such a finding is to be made

within 90 days of receipt of the petition, and the finding is then to be promptly published in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. Recently, the Service received and made findings on the following two petitions.

1. A petition from Professor Paul Alan Cox of Brigham Young University, dated November 19, 1984, and received by the Service on November 27, 1984, requests determination of endangered status for the Samoan fruit bat (*Pteropus samoensis samoensis*), which is found in American Samoa and Western Samoa. Observations by the petitioner, who spent several years studying this bat in the field, suggest that it has become extremely rare through destruction of its habitat and killing by people for use as food. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

2. A petition from the Commonwealth of Puerto Rico, dated December 27, 1984, and received by the Service on January 3, 1985, requests determination of endangered status for the Puerto Rican crested toad (*Peltophryne* [=*Bufo*] *lemur*), Caribbean coot (*Fulica caribaea*), ruddy duck (*Oxyura jamaicensis*), and West Indian Whistling duck (*Dendrocygna arborea*). The toad is known from Puerto Rico and, historically, from Virgin Gorda, British Virgin Islands. The birds are found in most of the West Indies. For purposes of the finding, the petition is considered to cover only the West Indian subspecies of the ruddy duck (*O. j. jamaicensis*). The petition indicates that all four species have declined in numbers in Puerto Rico, and other information available to the Service supports this suggestion. Although more data will be needed before any of these species can be formally proposed for addition to the List of Endangered and Threatened Wildlife, the Service has made the finding that the petition does present substantial information indicating that the requested action may be warranted.

As required in the case of a positive finding, the Service hereby initiates status reviews of the Samoan fruit bat, Caribbean coot, and West Indian ruddy duck. Reviews of the Puerto Rican crested toad and West Indian whistling duck are already in progress, as those species were covered by the Service's Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (47 FR 58454–58460). The Service plans to include all four species in a forthcoming revised Review of Vertebrate Wildlife.

Section 4(b)(3)(B) of the Act requires that within 12 months of receipt of a petition found to present substantial information, a finding be made as to whether the petitioned action is not warranted, warranted, or warranted but precluded by other listing activity. All comments and information received in response to the status reviews of the Samoan fruit bat, Puerto Rican crested toad, Caribbean coot, West Indian ruddy duck, and West Indian whistling duck will be considered in making such findings regarding these species.

The authors of this notice are George E. Drewry, Ronald M. Nowak, and Jay M. Sheppard, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 26, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–15988 Filed 7–3–85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rules published on March 14, 1985 (50 FR 10276), and June 4, 1985 (50 FR 23459), which notified the public that the U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1985–86, and provided information on certain proposed regulations.

This proposed rulemaking provides frameworks or outer limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed in early seasons for migratory bird hunting. These are hunting seasons that open prior to October 1 and relate to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; woodcock; common snipe; rails; common moorhens; purple gallinules; September teal; sea ducks; experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; experimental early goose framwork in a portion of Michigan; special sand-hill crane—Canada goose season in southwestern Wyoming; sand hill cranes in the Central Flyway and Arizona; and special extended falconry seasons. The frameworks for Alaska, Puerto Rico and the Virgin Islands will appear in a separate **Federal Register** document scheduled for publication on or about July 11. Supplemental rulemakings for some late hunting seasons, defined as those seasons opening on or about October 1 are also addresed. These generally related to the times and places where certain waterfowl may be hunted.

The Service annually prescribes hunting regulations frameworks to the States for season selection purposes. The primary purpose of this proposed rule is to facilitate establishment of early season migratory bird hunting regulations for the 1985–86 season. The Service noted that in the June 4, **Federal Register** revised guidelines for migratory bird hunting on Federal Indian Reservations were proposed.

DATES: The comment period for the proposed early season frameworks will end on July 15, 1985, except that for Alaska, Hawaii, Puerto Rico and the Virgin Islands the comment period closed on June 20, 1985. The comment period for late season proposals will close on August 19, 1985.

A Public Hearing on Late Season Regulations will be held August 1, 1985, starting at 9 a.m.

ADDRESSES: Address comments to Director (FWS/MBMO), Rm. 3552 U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. The August 1 Public Hearing will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, D.C. Notice of intention to participate in this hearing should be sent in writing to the Director (FW/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Comments received on the supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of

Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 254-3207.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons, and regulations for Alaska, Hawaii, Puerto Rico and the Virgin Islands. Early seasons are those that open before October 1; late seasons open about October 1 or later. Regulations are developed independently for the early and late seasons, and Alaska and insular areas. The early season regulations relate to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; common moorhens; purple gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; teal in September in the Central and Mississippi Flyways; experimental duck seasons opening in September in Florida, Iowa, Kentucky and Tennessee; an experimental early goose season in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; a special sandhill crane-Canada goose season in southwestern Wyoming; and some special extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; coots; and other special extended falconry seasons. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Certain general procedures are followed in developing regulations for both the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented as necessary, with additional **Federal Register** notices. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register**. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register**, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. On March 14, 1985, the Service published for public comment in the **Federal Register** (50 FR 10276) a proposal to amend 50 CFR Part 20, with comment periods ending as noted earlier.

On June 4, 1985, the Service published for public comment a second document (50 FR 23459) which provided supplemental proposals for both early and late season migratory bird hunting regulations frameworks, with comment periods ending July 15, 1985, for remaining early season proposals, and August 19, 1985, for late season proposals.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1985–86 season. All pertinent comments on the March 14 proposals received through June 20, 1985, have been considered in developing this document. In addition, new proposals for certain early season regulations are provided for public comment. Comment periods on this third document are specified above under DATES. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are scheduled for publication in the **Federal Register** on or about July 11, 1985, and for early seasons for other areas of the United States on or about July 26, 1985.

On June 20, 1985, a public hearing was held in Washington, D.C., as announced in the **Federal Register** of March 14 (50 FR 10276) and June 4 (50 FR 23459), 1985, to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, common moorhens, purple gallinules, common snipe and sandhill cranes. Proposed hunting regulations were discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; experimental duck seasons in September in Florida, Iowa, Kentucky and Tennessee; experimental early goose framework in a portion of Michigan; and experimental sandhill crane-Canada goose season in southwest Wyoming; special sea duck seasons in the Atlantic Flyway; and special extended falconry seasons.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals on March 14, 1985, in the **Federal Register** (50 FR 10276).

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These are briefly reviewed as a matter of public information, and to facilitate the Service's response to public comments at the Public Hearing on June 20 and in correspondence. Unless otherwise noted, persons making the presentations are Service employees.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1985 mourning dove population. New methods of analysis for mourning dove call-count data were used this year for the first time and included survey information gathered over the last 20 years. Population indices for mourning doves heard in the Central and Eastern Management Units showed significant increases from 1984 to 1985 as follows: Eastern, 14.8 to 16.8; Central, 21.2 to 24.2 average doves heard per route. No significant difference was found in the Western Unit although the index decreased from 11.5 to 10.5. The 1985 indices for the combined hunting states in the Eastern Unit and the combined hunting and nonhunting states in the Central Unit also showed significant increases from 1984. Trends were calculated for 5, 10, 15, and 20-year intervals. Estimates indicated downward trends in the Eastern Management Unit as a whole, the nonhunting states of the unit, and the Western Management Unit for all time periods. In the hunting states of the Eastern Unit and throughout the entire Central Management Unit, a downward trend was found during the most recent 5-year period; no trend was indicated for the other time periods. Trends for doves seen over the 20-year interval generally agree with trends for doves heard.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, reported on the status of white-winged and white-tipped doves in Texas. Approximately 244,000 white-winged doves are nesting in native brush habitat in 1985, an increase of 8% over the 225,000 birds counted in 1984. The population nesting in citrus has declined 54% from 253,000 whitewings in 1983 to 117,000 in 1985. This decline has resulted from the severe freeze of December 1983 that

reduced available nesting habitat from 52,000 acres of citrus in 1983 to 25,000 acres in 1985, a 52% reduction. Overall, the Lower Rio Grande Valley population is at its lowest level since 1963 (30% below the long-term average).

In upper south Texas, whitewing breeding populations have remained stable except in the area of Medina Lake where the population has increased from 35,000 birds in 1984 to 49,000 birds in 1985 (a 40% increase).

The 1985 call-count survey of white-tipped doves indicated a 12% decline from 1984 (from 0.59 to 0.52 doves per route). This decline occurred primarily in citrus habitat but was largely compensated for by increased nesting in native brush habitat.

Because of the declines in white-winged and white-tipped numbers as a result of reduced citrus habitat, the Texas Parks and Wildlife Department recommended that the normal 4-day (2 weekends) Special White-winged Dove Season be reduced to a single weekend (September 7–8). It is anticipated that this change will result in a significant reduction in the harvest of white-winged and white-tipped doves. Existing aggregate bag limits for dove species are recommended to remain unchanged.

Mr. Roy Tomlinson, Southwest Dove Coordinator, conveyed information received from the Arizona Game and Fish Department about white-winged dove status in Arizona. White-winged dove populations in Arizona declined during the late 1960s and 1970s because of nesting habitat loss, changes in agricultural practices, and overharvest. Under restricted hunting season regulations during the past 5 years, the populations have stabilized at a low level. In 1985, the whitewing call-count survey revealed 37.5 birds heard per route, an increase of 21% from 1984 and 5% from the 19-year average. The annual harvest in Arizona has varied between 135,000 and 182,000 whitewings during the past 4 years. No regulations changes are anticipated for the 1985 hunting season.

Mr. John Tautin, Woodcock Specialist, reported on the 1985 status of American woodcock. The most significant findings were from the recently conducted singing-ground survey. This cooperative survey of woodcock breeding populations in the United States and Canada indicated an increase of 7.6% among woodcock of the Eastern Region (Atlantic Flyway) since 1984. However, this population remains at a low level and has declined significantly over the long-term. In the Central Region (Mississippi Flyway and portions of the Central Flyway) the survey indicated that woodcock increased 8.1% since 1984. The Central Region population peaked in the late 19702, declined in recent years, and is now near its long-term average level.

Dr. James C. Bartonek, Pacific Flyway Representative, summarized the harvests and status of the two populations of band-tailed pigeons. Harvest of the Four-Corners Population is comparatively small and constant, about 5,000 birds. Harvest of the Pacific Coast Population in California and Washington in 1984 decreased over 1983 as a result of birds being widely dispersed. A harvest survey was not conducted in Oregon. Censusing pigeons at mineral springs in Oregon during late summer provides an index to the population. This annual census indicates an increase over 1983 and an increasing trend since the mid 1970s.

Mr. Havey W. Miller, Central Flyway Representative, reported on the status of sandhill cranes. The mid-continent population generally exceeds 500,000 birds, as measured by intensive surveys including aerial photography) of major springtime concentrations in Nebraska, and is increasing. Approximately 6,700 hunters harvested 11,000 cranes in the Central Flyway during the 1984–85 hunting season.

In the Pacific Flyway, sandhill cranes are harvested primarily in Alaska, where the take has been increasing and is now estimated to be about 1,800 per year. In addition, investigations on the Yukon-Kuskokiwm Delta suggest a harvest ranging from 1,000 to 2,000 cranes per year by subsistence hunters. The breeding population appears to be stable. During 1981–84, limited experimental seasons in the Wilcox Area of Arizona resulted in harvests ranging from 40 to 70 cranes. During special sandhill crane-Canada goose seasons in Lincoln County, Wyoming the past 3 years, an average of 133 cranes and 142 gese were harvested. The Rocky Mountain Population of greater sandhill cranes, to which some of the Arizona cranes and all the western Wyoming cranes belong, was estimated at above 15,000 birds in March 1985 and is either stable or increasing slightly.

Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, stated that, in 1984, the Service proposed guidelines for migratory bird hunting regulations on Federal Indian Reservations. Following review of comments from the States and a number of tribes, the Service proposed revised guidelines in the June 4, 1985, **Federal Register** (at 50 FR 23467). A draft environmental assessment has been prepared that addresses Indian hunting rights and evaluates impacts that the proposed guidelines would likely have on migratory bird harvest and population status. The revised guidelines and assessment have been sent to State Fish and Wildlife Agencies and to the Indian tribes that responded last year.

The Service believes that the revised guidelines will accommodate tribal requests for more flexibility in migratory bird hunting regulations without detrimental effects on the resource and anticipates that special migratory bird hunting regulations may be established on several Federal Indian reservations for the 1985–86 hunting season. As a safeguard, most such seasons will be established experimentally pending their evaluation.

Comments Received at Public Hearing

Six individuals presented statements at the Public Hearing on proposed early season regulations. The comments are summarized below and, where appropriate, the Service has provided a response.

Mr. John M. Anderson, representing the National Audubon Society, stated that proposed frameworks appeared to be in line with the status of mourning doves; however, the Society was alarmed over the long-term downward trend in some populations and he urged research on possible causes. He expressed concern over the status of white-winged and white-tipped doves in the Lower Rio Grande Valley and suggested that, while the decrease probably was related to the 1983 freeze of citrus trees, hunting seasons should be closed or limited to one weekend. Mr. Anderson urged extreme caution where sandhill crane seasons overlapped whooping crane migrations. He suggested that shooting hours start later to aid identification and that closing sandhill crane hunting seasons when whooping cranes were present would be beneficial but would not assure protection of those that arrive in the evening and depart the next morning. Mr. Anderson supported the proposed restrictive seasons on woodcock and encouraged reserach to determine reasons for their decline. He also commented on the decreased populations of geese breeding in Alaska and supported the recently developed Yukon-Kuskokwim Delta Goose Management Plan.

Response. National Audubon Society's endorsement of the proposed mourning dove hunting regulations frameworks and its concern over the long-term downward trend in some populations is noted.

The Service agrees that the severe freeze of citrus in Texas during December 1983 is responsible for the current decline of white-winged doves and that hunting has had no detrimental effect on the population. The restriction to a 2-day special whitewing season during 1985 (rather than full closure) in Texas is deemed sufficient to safeguard the reduced population. This restriction should also benefit white-tipped dove populations that are hunted concurrently during the whitewing seasons.

The dates and areas open for sandhill crane hunting have been developed to reduce overlap with migrations of whooping cranes. Furthermore, cooperative programs to monitor migrations are in effect and contingency plans have been developed to protect whooping cranes that might occur in any hunting areas. The Service and cooperating conservation agencies will continue to exercise caution as suggested. The Environmental Assessment *Proposed Shooting Hours Regulations* dated August 1, 1977, indicated that hunters are reasonably competent at identifying birds during the period before sunrise when cranes usually fly from roosting sites. However, the Service and cooperating agencies will continue to monitor crane hunting activity during this period. The Service notes that a considerable proportion of the sightings of whooping cranes during migrations has been reported by hunters.

Mr. Ronnie R. George, representing the Central Flyway Council, supported and endorsed the following regulations changes for the 1985–86 hunting season:

1. Conversion of the just-completed 3-year experimental hunting season for sandhill cranes in Lincoln County, Wyoming to an operational season.

2. Adoption of proposed basic regulation frameworks for all migratory species in the Central Management Unit that are not covered by other specific recommendations.

Mr. George, as representative of the Texas Parks and Wildlife Department, recommended a 2-day white-winged dove hunting season during September 7 and 8, 1985, in that portion of Texas designated as the Special White-winged Dove Area. The daily bag and possession limits would remain the same as last year (i.e., 10 doves in the aggregate, no more than 2 of which could be mourning doves nor 2 of which could be white-tipped doves). The reduction of from 4 to 2 days is offered in response to reduced whitewing populations due to decreased citrus nesting habitat as the result of a severe freeze in 1983. This recommendation is consistent with current white-winged and white-tipped dove population objectives in Texas.

The Texas Department is also considering movement of the eastern portion of the boundary between the Central and South Mourning Dove Hunting Zones from its present location along U.S. Highway 87 between San Antonio and Post Lavaca northward to Interstate 10 between San Antonio and Orange to better reflect natural boundaries between ecological regions in the State. The decision, however, will be made at a later date, pending receipt of additional data and comments from the public.

Response: The Service concurs that the recently-completed 3-year experimental sandhill crane season has proven to be successful in reducing depredation problems and in providing recreational activity without adverse effects to the crane population in Wyoming. Therefore, it is proposed to allow a similar season during 1985–86 on an operational basis.

The Service concurs that restricted hunting regulations should be imposed for white-winged doves in 1985. The Texas proposal of a reduction from 4 to 2 days is considered adequate to limit harvest commensurate with reduced whitewing populations in 1985. The Service notes, however, that if further population reductions occur in 1986, that additional restrictions or closure will be considered for the 1986–87 hunting season.

The Service proposes to allow Texas the option of changing the boundary between the Central and South Mourning Dove Hunting Zones.

Dr. Albert M. Manville, II, representing Defenders of Wildlife, discussed that organization's preferred strategies for duck harvests during the forthcoming late seasons. He recommended that restrictions be taken in Alaska to further reduce harvest of five goose populations that have been declining. Additionally, these geese should be protected from disturbance by man during their reproductive period. He was supportive of the Service's recent efforts to address the problem of lead poisoning in bald eagles. He questioned the advisabilty of pre-dawn [sic] hunting of sandhill cranes because of difficulty in distinguishing them from young whooping cranes. Concern was expressed about having sandhill crane and tundra swan hunting seasons occurring at times and places that whooping cranes occur. The Service was commended for the proposed restrictive regulations on hunting woodcock. He requested that the Service re-examine its position regarding the September 1st opening of seasons for hunting mourning doves as related to nesting and recommended a north-to-south system of zoning in which seasons would be set to accommodate latitudinal differences in breeding chronology of doves.

Response: The strategies for duck harvest preferred by Defenders of Wildlife will be considered by the Service during the process of establishing late-season regulations.

Dr. Manville's statements concerning geese in Alaska will be addressed in the upcoming **Federal Register** document of final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands.

His concern about shooting hours and the hunting of either sandhill cranes or tundra swans, as related to the possibility of mistakenly shooting whooping cranes, has been previously discussed in our response to Mr. Anderson (above) and in the **Federal Register** of July 12, 1982 (47 FR 30165), July 7, 1983 (48 FR 31269) and July 9, 1984 (49 FR 28029). Because no new information has been presented, it does not appear that further response is necessary at this time.

The Service has responded previously in a number of **Federal Register** documents to concerns about September hunting of mourning doves (see 47 FR 30164–30165 of July 12, 1982, 48 FR 14712 and 48 FR 31269 of April 5 and July 7, 1983, respectively, and 49 FR 28029 of July 9, 1984). The results of an extensive study of mourning dove nesting indicated that September hunting does not have a demonstrable adverse effect on mourning dove populations. The appropriateness of the present mourning dove management units was discussed previously on July 1, 1980 (45 FR 44541) and on July 12, 1982 (47 FR 30164). The 3 current management units reasonably delineate dove population segments that are largely independent of each other. These units provide an opportunity to deal with specific population issues.

Mr. Dale Sheffer, speaking on behalf of the Pennsylvania Game Commission and the Northeastern Association of Fish and Wildlife Agency Directors, endorsed the Service's proposed restrictive regulations on hunting woodcock but recommended that New Jersey not be panalized 10 days of hunting should they choose to zone.

Response: The Service appreciates the cooperation and support of state conservation agencies and private organizations in this important endeavor to adjust harvest opportunities to a level commensurate with the population status of Eastern woodcock. To assure

that the proposed changes are effective, and because Eastern woodcock remain at a low level, the Service believes it inappropriate to make exception and dispense with the long-standing 10-day penalty taken by New Jersey for selecting its option to zone.

Mr. Charles Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, stated that the recent cooperative study by many States and the Service concluded that hunting of mourning doves in September had no demonstrable adverse effects on dove populations throughout the United States. Thus, the requests by protectionist groups to limit hunting of mourning doves to dates after September have no valid justification. Mr. Kelley also stated that the Southeastern Association strongly supports the Service's proposed mourning dove regulations for 1985 and also the restrictive regulations on woodcock hunting.

Ms. Jennifer Lewis, representing the Humane Society of the United States (HSUS) and the World Society for the Protection of Animals (WSPA), reiterated objections of these organizations to hunting of mourning doves in September. She asserted that shooting adult doves while they are nesting, leaves the young to die of exposure, starvation and predation. Ms. Lewis also expressed several concerns and recommendations regarding hunting seasons on waterfowl and columbid species in Puerto Rico.

Response: The Service's position concerning September hunting of mourning doves is discussed in the response to Dr. Manville's comments. The same comments were made by Ms. Lewis last year and responded to in the July 9, 1984, **Federal Register** (49 FR 28029). Ms. Lewis' recommendations concerning migratory bird hunting in Puerto Rico will be addressed in the upcoming **Federal Register** document of final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico and the Virgin Islands.

Written Comments Received

The supplemental proposed rulemaking, which appeared in the **Federal Register** dated June 4, 1985, (50 FR 23459), summarized 21 comments which had been received by May 3, 1985. Since then, 2 additional comments on early season proposals have been received. They are summarized below and numbered in the order in the March 14, 1985, **Federal Register**. These responses originated from 2 States.

23. *Mourning Doves:* The Texas Parks and Wildlife Department (letter of May 14, 1985) requested the option of changing the eastern portion of the boundary between the Central and South Mourning Doves Zones. The Georgia Department of Natural Resources (letter of May 14, 1985) also requested a minor change in the boundary separating their North and South Dove Zones.

The Service accepts Texas' request for the option of changing the Central South Zone boundary as discussed above in response to Mr. Ronnie R. George's comments on behalf of the Texas Parks and Wildlife Department at the June 20, 1985, Public Hearing. The Service also accepts the minor boundary change in Georgia and has incorporated them in the proposed frameworks.

Public Comment Invited

Based on the results of migratory game bird studies now in progress having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Director intends that finally adopted rules be as responsible as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlied is contrary to the public interests.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

All relevant comments on these early season proposals received no later than July 15, 1985, and on late season proposals received by August 19, 1985, will be considered. The Service will attempt to acknowledge received comments, but substantive responsive to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and "by taking such action necessary to insure that any action authorized, funded, or carried . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

The Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, Mr. Conrad A. Fjetland, Acting Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of

conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. Examples of such consideration include areas in Alaska and the Pacific Flyway closed to Canada goose hunting for protection of the endangered Aleutian Canada goose, and closed areas in Puerto Rico for protection of the Plain pigeon and Puerto Rican parrot.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985 (at 50 FR 10282), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities and under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. As noted in the early FR publication, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Proposed Regulations Frameworks for 1985–86 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migatory Bird Treaty Act, The Secretary of the Interior has approved proposed frameworks which prescribe season lengths, limits, shooting hours and outside dates within which States may select seasons for mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens; purple gallinules; September teal seasons; experimental duck seasons opening in September in Iowa, Florida, Kentucky, and Tennessee; sea ducks (scoters, eider and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes-Canada geese in southwestern Wyoming; experimental early goose framework in a portion of Michigan; and special extended falconry seasons. For the guidance of State conservation agencies, these frameworks are summarized below.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens, purple gallinules, sandhill cranes or special extended falconry seasons to open in September must make its selection no later than July 26, 1985. States desiring these seasons to open after September 27 may make their selections at the time they select regular waterfowl seasons. Season selections for the 4 States offered experimental September duck seasons must also be made by July 26, 1985.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than July 26, 1985. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1985, and January 15, 1986, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning: Alabama, Georgia, Illinois, Louisiana and *Mississippi,* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence, east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River the Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana, and Mississippi may commence no earlier than September 20, 1985.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: In addition to the basic framework and the alternative, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then southeast on U.S. Highway 87 to port Lavaca (*or*, as an option from San Antonio: then northeast on Interstate 10 to Orange).

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 2-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1985 and January 25, 1986; the South zone between September 20, 1985 and January 25, 1986.

C. Except during the special 2-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves, (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

In all states except Arizona, not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

White-Winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico, and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1985. *Florida* may select hunting seasons between September 1, 1985 and January 15, 1986.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Berardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 2 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than two mourning doves and two white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than four mourning doves and four white-tipped doves in possession, and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1985, and January 25, 1986, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-winged doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1985, and January 15, 1986, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, in either season, the bag and possession limits of white-winged doves may not exceed 4 and 8 respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 1, 1985, and January 15, 1986.

Hunting, Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with a bag and possession limit of 5. Each band-tailed pigeon hunter in Nevada must have in possession while hunting a permit issued by the State for the purpose of collecting harvest and hunter participation data.

Zoning: California may select hunting seasons of 30 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1 and November 30, 1985.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1985, in the North Zone and October 1 and November 30, 1985, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1985, and January 20, 1986, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway,[2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1985, and January 31, 1986. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1985, and February 28, 1986.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1985, and February 28, 1986. In *Maine, Vermont, New Hampshire, Massachusetts Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Hunting Seasons, and Daily Bag and possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1985, through January 20, 1986, in the Atlantic and Mississippi Flyways and September 1, 1985, through January 19, 1986, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons may be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except in the Pacific Flyway the daily bag and possession limits may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway

Seasons not to exceed 58 days between September 1, 1985, and February 28, 1986, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1985 and February 28, 1986 may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill cranes season must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit.

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Special Seasons in the Pacific Flyway: Arizona may select a sandhill crane season subject to the following conditions:

1. The season may not exceed 6 days in November 1985.

2. The hunting area is confined to Game Management Units 30A, 30B, 31, and 32.

3. Each hunter must obtain and have in possession while hunting a special permit issued by the State. No more than 200 permits may be issued. Each permittee may take 2 sandhill cranes per season.

4. Emergency closures for all crane hunting may be invoked as necessary.

Special Sandhill Crane-Canada Goose Season

Wyoming may select a season(s) on sandhill cranes and Canada geese subject to the following conditions:

1. Outside dates for the season(s) are September 1–22, 1985.

2. Hunting will be by State permit, with 125 permits issued for the Bear River drainage and 125 permits issued for Star Valley, all in Lincoln County. Each permittee may take 2 sandhill cranes and 3 Canada geese per season.

3. Emergency closures for all crane hunting may be invoked as necessary.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1985, and January 20, 1986.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: In the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island* and *Connecticut*; in those coastal waters of the State of *New York* lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of *New York* lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia*; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in *Delaware, Maryland, North Carolina* and *Virginia*; and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

Deferred Selection: Any State desiring its sea duck season to open in September must make its selection no later than July 26, 1985. Any State desiring its sea duck season to open after September may make its selection at the time it selects the waterfowl season.

September Teal Season

Outside Dates: Between September 1 and September 30, 1985, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico,* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee* and *Texas* in areas delineated by State regulations.

Hunting Seasons, and Bag and Possession Limits: Not to exceed 9 consecutive days, with bag and possession limits of 4 and 8, respectively.

Shooting Hours: From sunrise to sunset daily.

Deadline: States must advise the Service of season dates and special provisions to protect non-target species by July 26, 1985.

Special September Duck Seasons

Iowa September Duck Season: Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1985, the 5-day season segment may commence no earlier than September 21, with daily bag and possession limits being the same as those in effect during the 1985 regular duck season.

Tennessee, Kentucky and Florida September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee, Kentucky,* and *Florida* subject to the following conditions:

1. In *Kentucky* and *Tennessee* the seasons will be in lieu of September teal seasons; in *Florida* the season will be in lieu of the extra teal option.

2. In all States, the daily bag limit will be 4 ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit;

Experimental September Goose Season

Michigan—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee and Ontonagon, the framework opening date for geese is September 28. Season length and limits for geese in this area will be established later with other regulations for the regular waterfowl season.

Special Falconry Regulations

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note. In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: July 1, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–16121 Filed 7–3–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 129
Friday, July 5, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1984-85 Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of milk price support level and Commodity Credit Corporation purchase prices.

SUMMARY: This Notice of Determination provides that the level of price support for milk containing 3.67 percent milkfat for the period July 1, 1985, through September 30, 1985, shall be $11.60 per hundredweight. It also establishes prices at which butter, cheese and nonfat dry milk (NDM) will be purchased by the Commodity Credit Corporation (CCC) in order to support the price of milk at that level.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS-USDA, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013: (202-447-3385).

The Final Regulatory Impact Analysis regarding the actions of this Notice of Determination is available from Charles N. Shaw, Dairy/Sweeteners Group, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013: (202) 447-7601.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases: Number—10.051 as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act is not applicable to this notice since CCC is not required to publish a notice of proposed rulemaking with respect to the subject matter of this notice. Section 102(b) of the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98-180) requires that the provisions of section 210(d) of the Agricultural Act of 1949, as amended by the 1983 Act, be implemented without regard to the provisions requiring notice and other public procedures for public participation in rulemaking as set forth in 5 U.S.C. 553, or in any directive of the Secretary of Agriculture.

The notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On April 3, 1985, a notice was published in the **Federal Register** (50 FR 13258) establishing the level of price support at $12.10 per hundredweight for milk containing 3.67 per centum milkfat for the period April 1, 1985, through September 30, 1985. That level of price support was established pursuant to provisions of section 201(d) of the 1949 Act, as amended by section 102 of the 1983 Act.

Section 201(d), as amended, further provides that if the Secretary of Agriculture estimates on July 1, 1985, that for the twelve-month period beginning on that date the CCC net price support purchases of dairy products would be in excess of five billion pounds milk equivalent, the Secretary may reduce the price support rate in effect on that date in the amount of 50 cent per hundredweight.

CCC supports the price of milk through the purchase of nonfat dry milk, butter and cheese. It is estimated that if the level of price support were continued at $12.10, CCC net price support purchases of such products for the twelve-month period beginning July 1, 1985, would be 12.2 billion pounds, milk equivalent. Since this estimate of CCC net price support purchases exceeds 5 billion pounds, milk equivalent, it has been determined that the level of price support in effect on July 1, 1985, shall be reduced from $12.10 per hundredweight by the amount of 50 cents per hundredweight. This notice implements that reduction.

It has been further determined that a level of support of $11.60 effective July 1, 1985, will assure an adequate supply of pure and wholesome milk to meet current needs. The reduction in the level of price support to $11.60 per hundredweight is needed to bring about a reduction in the currently excessive purchases and costs of the program. Even with the reduction in the price support level, it is expected that CCC net purchases for the twelve month period beginning July 1, 1985, will be 10.7 billion pounds milk equivalent.

Accordingly, the price of milk shall be supported, effective July 1, 1985, at a rate equivalent to $11.60 per hundredweight for milk containing 3.67 per centum milkfat.

It has been determined that the purchase by CCC of butter, cheese and nonfat dry milk produced on or after July 1, 1985, at the prices set forth in this notice will support the price of milk at a rate equivalent to $11.60 per hundredweight for milk containing 3.67 per centum milkfat.

Determination

Accordingly, the level of support for milk and the prices at which CCC will purchase the products of milk shall be as follows:

(a) The level of support for the period July 1, 1985, through September 30, 1985, shall be $11.60 per hundredweight for milk containing 3.67 percent milkfat.

(b) Effective July 1, 1985, CCC purchase prices for butter, cheese and nonfat dry milk shall be as follows:

	Dollars per pound	
	Products produced before July 1, 1985 and graded and offered by July 15, 1985	Products produced on or after July 1, 1985 or not graded and offered by July 15, 1985
Butter, 64- and 68-lb. blocks[1] (U.S. Grade A or higher)	1.4325	1.3975
Nonfat dry milk (spray), 50-lb. bags (U.S. Extra Grade, but not more than 3.5 percent moisture):		
Nonfortified	0.8475	.8075
Fortified (Vitamins A and D)	0.8575	.8175
Cheddar cheese, standard moisture basis:[2]		
40- and 60-pound blocks, U.S. Grade A or higher (No vat shall contain more than 38.5 percent moisture)	1.2875	1.2400
500 lb. in fiber barrels, U.S. Extra Grade (No vat shall contain more than 38.5 percent moisture)	1.2450	1.1975

[1] Single nationwide price for butter at all locations.
[2] The cheese price will be adjusted for moisture content, except that the price adjustment for cheese with a moisture content of less than 34 percent will not exceed that for cheese with a moisture content of 34 percent.

(c) Any further adjustment in the level of support or CCC purchase prices will be announced by the Secretary of Agriculture in a notice published in the **Federal Register.**

Authority: (Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d)); and secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and 714c))

Signed at Washington, D.C. on June 28, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-15993 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Howard Creek Watershed, WV; Intent To Prepare Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare a environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Howard Creek Watershed, Greenbrier County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone: 304-291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection and flood prevention. Alternatives under consideration to reach these objectives include conservation land treatment, nonstructural measures, earth dam and channel work.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting was held at 9:00 a.m., Thursday, April 4, 1985, in the Conference Room of the Soil Conservation Service Field Office, Lewisburg, West Virginia, to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the scoping meeting may be obtained from Rollin N. Swank, State Conservationist, at the above address or telephone 304-291-4151.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. The State of West Virginia's process regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Rollin N. Swank,

State Conservationist.

June 26, 1985.

[FR Doc. 85-16053 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Technical Information Service

Intent To Grant Exclusive Patent License; Eli Lilly & Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Eli Lilly and Company, having a place of business in Greenfield, Indiana, an exclusive right to manufacture, use and sell products embodied in the invention entitled "Plant Growth Promoting Brassinosteroids," U.S. Patent 4,346,226. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other material relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-16045 Filed 7-3-85; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Lehn & Fink Products Group

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Lehn & Fink Products Group, Sterling Drug, Inc., having a place of business in Montvale, New Jersey, and exclusive right to manufacture, use and sell products embodied in the inventions entitled "Cockroach Repellents," U.S. Patent Application SN 6-625,266 and SN 6-625,329 and "Insect Repellents," U.S. Patent Application SN 6-625,328. The patent rights in these inventions have been assigned to the United States of America.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other material relating to the proposed license must be submitted to the Office of

Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-16047 Filed 7-3-85; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; SEMicro Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to SEMicro Corporation, having a place of business in Rockville, Maryland, an exclusive right to manufacture, use and sell products embodied in the invention entitled "Bond Testing Apparatus," U.S. Patent 4,491,014. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not service the public interest.

Inquiries, comments and other material relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-16046 Filed 7-3-85; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Canada

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Issuance of interim order.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organization Order 10-14, the authority under section 914 of title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On June 12, 1985, the Patent and Trademark Office received petitions for the issuance of an interim order with respect to Canada from the Canadian Manufacturers' Association, the Electrical and Electronics Manufacturers Association of Canada, the Canadian Business Equipment Manufacturers Association, and the Canadian Advanced Technology Association which included supporting information from the Government of Canada. Comments on the petitions were requested on or before June 25, 1985. Comments were received from the Semiconductor Industry Association (SIA) and the Information Industry Association (IIA).

In their comments, the IIA and the SIA supported the issuance of an interim order. SIA urged that, in view of the short period for comments, any order issued should be limited to 60 or 90 days. The Commissioner has determined that this period is unrealistically short in view of the good faith efforts and reasonable progress in Canada toward providing protection for mask works of U.S. nationals and domiciliaries, and has determined that an order should issue for one year from the date of signature of the order.

EFFECTIVE DATE: The effective date of this order shall be June 12, 1985, the date of receipt of the petitions.

Termination Date: This order shall terminate on June 27, 1986, one year from its date of signature.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded
>
> (A) having or representing the predetermined three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works eligible for protection under basic criteria set out in 17 U.S.C 902. First, the owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; second, the mask work must be first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and sovereign authorities of foreign nations if the Secretary finds:

> (1) That the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) Entering into a treaty described in section 902(a)(1)(A); or
>
> (B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
>
> (2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

In the Memorandum from the Minister of Consumer and Corporate Affairs, published as part of the Notice of Initiation of Proceeding at page 25288 of the Federal Register, on June 18, 1985, the Minister lays out the activities that his Government is undertaking to develop legislation for the protection of mask works. The fact that the petition for the issuance of this order has been submitted by four major Canadian industrial associations shows the strong industry support for these activities. The activities of the Canadian Government constitute good faith efforts toward developing legislation for the protection of mask works. The activities are in an early stage of development, consequently a one-year order will be issued to permit a review of the progress toward mask work protection in Canada.

There have been no allegations that Canadian nationals, domiciliaries, or sovereign authorities are engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works.

Granting an interim order for Canada will promote international comity in the protection of mask works. Accordingly, I find that the conditions for the issuance of an interim order have been fulfilled with respect to Canada.

The record supports the conclusion that Canada is engaged in good faith efforts to develop effective legislation to protect semiconductor chip products. However, we recognize that the activities in Canada are in a preliminary stage of development. We have determined that, a review of progress would be appropriate, but the order should be long enough to permit Canada to make significant progress toward developing its own legislative proposals. Accordingly, this order will endure one year from its date of signature. This will permit a review of progress on a timely basis without unduly burdening either the parties to this proceeding or the Government.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Canada

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 8, 1985, I find that: Canada is and has, since June 12, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Canadian nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Canada are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 12, 1985, and this order shall terminate on June 27, 1986, one year from its date of signature.

Dated: June 27, 1985.

Margaret M. Lawrence,

Acting Commissioner of Potents and Trademarks.

[FR Doc. 85-16006 Filed 7-3-85; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: August 7, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Services

Commissary Shelf Stocking and Custodial, Oakland Army Base, Oakland, California

Commissary Shelf Stocking and Custodial, Scott Air Force Base, Illinois

Commissary Shelf Stocking and Custodial, Fort Monmouth (Ocean Port), New Jersey

C. W. Fletcher,

Executive Director.

[FR Doc. 85-16008 Filed 7-3-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 26, 1985.

The USAF Scientific Advisory Board Arnold Engineering Development Center Advisory Group will meet at the Arnold Engineering Development Center Headquarters, Arnold Air Force Station, TN, August 12 through 14, 1985, from 8:00 AM to 4:30 PM each day to review aerodynamic test facilities and equipment and to discuss technology issues and plans for engineering test support.

This meeting will concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (9)(B) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

[FR Doc. 85-16054 Filed 7-3-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Education Appeal Board

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) between April 15, 1985, and June 15, 1985. A summary of each appeal has been included to help potential

intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, D.C. 20202. Telephone: (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct: (1) Audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED administered programs that involve: (a) A determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees. Final regulations governing Board jurisdiction and procedures were published in the Federal Register on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Applications Accepted

Vocational Rehabilitation

Appeal of Multi Resource Centers, Incorporated, (Minnesota), Docket No. 6-(181)-85, Audit Control No. 05-30055.

Multi Resource Centers, Incorporated (MRC), Minneapolis, Minnesota, appealed a final audit determination issued by the Grants and Contracts Service (GCS). The underlying audit reviewed costs claimed under grants from the Rehabilitation Services Administration during the period September, 1981, through September, 1982.

Costs were disallowed because documentation of the charges was allegedly inadequate, the matching requirement allegedly was not met, and some costs allegedly were not directly related to the grant.

The Department seeks a refund of $81,912. MRC has refunded $3,792 leaving $78,120 at issue.

Appeal of the Arizona Department of Economic Security, Docket No. 7-(182)-85, Audit Control No. 09-41527.

The Arizona Department of Economic Security (Arizona) requested review of a final audit determination made by the Regional Commissioner of the Rehabilitation Services Administration. The final audit determination was based on a single audit of Arizona for fiscal years 1980 and 1981 conducted by Arthur Anderson and Company.

Costs were disallowed which allegedly were not adequately documented nor allocated in accord with OMB Circular A-87.

The Department seeks a refund of $103,654. Arizona does not dispute $13,168 of the disallowance. The sum of $90,486 remains at issue.

Appeal of the New Jersey Division of Vocational Rehabilitation Services, Docket No. 12-(187)-85.

The New Jersey Division of Vocational Rehabilitation Services has appealed the denial of its request to incur an expenditure of $7,765 during the term of its grant. A subgrantee, Social Service Federation, desired to purchase a lift-equipped van to provide transportation to its clients. The Grants and Contractors Service denied the request.

Miscellaneous Programs

Appeal of Solidaridad Humana, (New York), Docket No. 8-(183)-85, Audit Control No. 09-40107.

Solidaridad Humana, New York, requested review of a final audit determination issued by the Grants and Contracts Service. The underlying audit reviewed costs claimed under a Title VII bilingual education grant during Fiscal Year 1983.

Space costs were disallowed because the cost allegedly were not adequately documented. Indirect costs allegedly exceeding the rate of eight percent also were disallowed.

The Department seeks a refund of $6,615. Solidaridad Humana concedes the disallowance of $111 for supplies. The sum of $6,504 remains at issue.

Appeal of the State of California, Docket No. 9-(184)-85, Audit Control No. 09-30062.

California has appealed a final audit determination of the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed reimbursements to local educational agencies for indirect costs incurred in administering the migrant education program for the period June 1, 1980, through August 31, 1981.

Indirect cost which allegedly exceeded the allowable indirect cost rate were disallowed.

The Department seeks a refund or $221,928. California disputes this liability.

Appeal of the Illinois States Library, Docket No. 10-(185)-85, Audit Control Nos. 05-30006 and 05-30009.

The Illinois State Library (Illinois) requested review of a final audit determination issued by the Assistant Secretary for Educational Research and Improvement. The audit reviewed costs charged under the Library Services and Construction Act for the period July 1, 1977, through December 31, 1980.

Cost, were disallowed for allegedly inadequate documentation, because funds allegedly were not available for obligation, and because allegedly the charges were unrelated to improving public library services.

The Department seeks a refund of $10,999,530. Illinois contests this liability.

Appeal of the Texas Education Agency, Docket No. 11-(186)-85, Audit Control No. 06-30010.

The Texas Education Agency (Texas) appealed a final audit determination issued by the Grants and Contracts Service. The underlying audit reviewed the administration of grants at Texas' Education Service Centers for the period September 1, 1979, through August 31, 1981.

Restricted indirect costs claimed for Fiscal Year 1981 were disallowed because allegedly the cost rate was overstated and the rate was improperly applied to pass-through funds.

The Department seeks a refund of $227,300. Texas disputes this liability.

Appeal of the State of Michigan, Docket No. 13-(188)-85, Audit Control No. 05-24907.

Michigan requested review of a final audit determination issued by the Assistant Secretary for Vocational and Adult Education. The final audit determination was based on an audit of vocational-technical education services during the period February 1, 1976, through June 30, 1980, conducted by the Michigan Office of Auditor General.

Equipment cost were disallowed because supplemental awards for the purchases allegedly were made in excess of formula-derived funding levels. Cooperative education costs were disallowed because priority allegedly was not given to funding local educational agencies with high rates of dropouts or youth unemployment.

The Department seeks a refund of $275,207. Michigan contests this liability.

Appeal of the State of New Jersey, Docket No. 14-(189)-85, Audit Control No. 02-35011.

New Jersey appealed a final audit determination issued by the Assistant Secretaries for Elementary and Secondary Education and Special Education and Rehabilitative Services. The underlying audit was organization-wide audit of the New Jersey Department of Education for the period July 1, 1979, through June 30, 1981, conducted by the New Jersey Division of State Auditing.

Salary and fringe benefit costs, allegedly inadequately documented, were disallowed.

The Department seeks a refund of $1,505,289. New Jersey disputes this liability.

Intervention

Final regulations establishing intervention procedures for the Education Appeal Board in 34 CFR 78.43 provide that an interested person, group, or agency may, upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-60), Washington, D.C. 20202. Telephone: (202) 245-7835.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: July 1, 1985

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 85-16158 Filed 7-3-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in July 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Petroleum Refining Coordinating Subcommittee will hold its seventh meeting on Thursday, July 18, 1985, starting at 9:00 a.m., in the Livingston Room of the Four Seasons Hotel, 1300 Lamar Street, Houston, Texas.

The tentative agenda for the U.S. Petroleum Refining Coordinating Subcommittee meeting is as follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discussion of study assignments.
3. Review of task group assignments.
4. Discussion of any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Petroleum Refining Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitiate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Petroleum Refining Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the Public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on June 27, 1985.

Donald L. Bauer,

Acting Assisting Secretary for Fossil Energy.

[FR Doc. 85-16092 Filed 7-3-85; 8:45 am]

BILLING CODE 6540-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-538-000 et al.]

ANR Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP85-538-000]

June 27, 1985

Take notice that on May 24, 1985 ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-538-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate certain facilities in order to transport and delilver up to 115,000 billion Btu's natural gas per day and to exchange portions of such gas with Northwest Pipeline Corporation (Northwest) and El Paso Natural Gas Company (El Paso), all as more fully set forth in the application on file with the Commission and open for public inspection.

Applicant states that it has entered into a gas purchase contract with Exxon Corporation (Exxon) dated May 1, 1984, which provides for the purchase of some 430 Bcf of gas reserves in Sublette and Lincoln Counties, Wyoming, (referred to as the LaBarge field gas) and a daily contract quantity of 1,000 Mcf of gas for every 5,000,000 Mcf of reserves. Such gas, it is explained, would be delivered by Exxon to Applicant at the tailgate of Exxon's existing, but partially complete, Shute Creek processing plant in Lincoln County, Wyoming.

Applicant requests authority to construct and operate an undivided twenty-five percent interest in a proposed 17.53 mile 20/inch pipeline and appurtenant facilities (residue pipeline) which Northwest proposes to construct from the tailgate of Exxon's Shute Creek plant to a point of interconnection on its 30-inch Opal lateral, all in Lincoln County, Wyoming, as more fully described in Northwest's application pending in Docket No. CP85-349-000 and filed on March 8, 1985. (See Commission's Notice of Application issued April 16, 1985.)

Applicant states that it would reimburse Northwest an estimated $2,123,000 for its undivided twenty-five percent interest ownership in Northwest's proposed residue pipeline. Additionally, Applicant says it would reimburse Northwest monthly for the full cost of service attributable to

Northwest's seventy-five percent interest in the proposed residual pipeline.

Applicant states that Northwest would operate the proposed residue line on behalf of itself and Applicant and would transport the LaBarge gas on a firm basis and/or exchange such gas on a best efforts basis up to a combined maximum 115 billion Btu's of natural gas per day.

Applicant requests authorization to exchange gas with Northwest and El Paso in order to receive the LaBarge gas into its pipeline system. Applicant states that it has executed a gas transportation and exchange agreement with Northwest dated January 23, 1985, and a gas exchange agreement with El Paso dated October 11, 1984.

It is explained that Applicant proposes to tender up to 115 billion Btu's per day of the LaBarge gas to Northwest at the interconnection of Northwest's proposed residue pipeline and its existing Opal lateral in Lincoln County, Wyoming, in exchange for thermally equivalent Northwest volumes tendered to Applicant at existing pipeline interconnections between Applicant and Northwest in Oklahoma. It is further explained that for volumes not exchanged, Northwest would transport and redeliver thermally equivalent volumes to El Paso at existing interconnections near Ignacio, Colorado, and/or Colorado Interstate Gas Company (CIG) near Green River, Wyoming.

It is further explained that El Paso would receive up to 75 billion Btu per day from Northwest for Applicant's account at the Northwest/El Paso Ignacio interconnection and exchange thermally equivalent volumes with Applicant at a future point of interconnection between El Paso and Applicant in Roger Mills County, Oklahoma. Applicant states it has been advised that El Paso, in the near future, would construct, own, and operate such interconnecting facilities. The agreement with El Paso provides for the exchange of gas without charge to either party, it is stated.

Incident to the proposed exchange with El Paso, Applicant requests authority to construct and operate a tap on its existing 16-inch line in Roger Mills County, Oklahoma. The proposed tap is estimated to cost $28,265.

Applicant states that up to 40 billion Btu's per day of the LaBarge gas which is not exchanged with Northwest or El Paso would be tendered by Northwest to CIG for Applicant's account at an existing point of interconnection between Northwest and CIG near Green River, Wyoming. Applicant also states that CIG is currently transporting and exchanging natural gas pursuant to Applicant's existing FERC Rate Schedule X-86 and that the LaBarge gas tendered by Northwest to CIG for Applicant's account would be delivered to Applicant under such existing rate schedule.

Comment date: July 18, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP84-239-002]

June 28, 1985.

Take notice that on June 10, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP84-239-002 an amendment to its request filed in Docket No. CP84-239-000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to reflect an increase in the volume of natural gas transported on behalf of Middletown Paperboard Co., a Division of Newark Boxboard Co. (Middletown), under the authorization issue in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Texas Gas requests amendment of the authorization in Docket No. CP84-239-000 to reflect an amendment dated May 24, 1985, between Texas Gas and Middletown to their transportation agreement of December 27, 1983, which provides for an increase in the volume of gas transported under the agreement from a maximum contract demand of 1,300 Mcf per day to 1,500 Mcf per day.

Comment date: August 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America.

[Docket No. CP85-551-000]

June 28, 1985.

Take notice that on May 31, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP85-551-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Jones and Laughlin Steel Company (J & L) under the certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport a maximum of 15 billion Btu of natural gas per day for J & L from Custer, Woodward, Caddo, Washita and possibly Beaver Counties, Oklahoma, to Cook County, Illinois. Natural states that it would charge transportation fees of 27.2 cents, 27.2 cents, 27.9 cents, 28.2 cents and 28.6 cents per million Btu of gas received from these receipt points, respectively, and that in addition, J & L would pay the Gas Research Institute's surcharge funding unit per million Btu as shown on Sheet No. 5 of Natural's FERC Gas Tariff, Volume No. 1.

It is explained that previously, Natural was authorized in Docket No. CP85-298-000 to provide essentially the same transportation service to LTV Steel Company, predecessor to J & L, but at a maximum daily volume limitation of 10 billion Btu's per day.

Natural states that it commenced this additional service on April 1, 1985, pursuant to § 157.209(e)(1) of the Regulations for a 120-day period that would terminate on July 30, 1985. Natural states that should authorization in § 157.209(e) be extended past June 30, 1985, Natural proposes to continue this service for the period of extension authorized in § 157.209(e), or until January 1, 1987, whichever period is less.

Natural also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Natural will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: August 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP85-561-000]

June 28, 1985.

Take notice that on June 4, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP85-561-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increased

deliveries of natural gas to Anderson Clayton Foods (Anderson Clayton), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to deliver an additional 500 Mcf of natural gas per day on an interruptible basis to Anderson Clayton at its plant in Jacksonville, Illinois. It is said that currently, Panhandle delivers 3,000 Mcf per day pursuant to Amendment No. 2, dated December 31, 1984, to the Industrial Gas Contract dated March 12, 1984.

Comment date: July 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-612-000]

June 28, 1985.

Take notice that on June 13, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77011, filed in Docket No. CP85-612-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Consolidated Gas Transmission Corporation (Consolidated), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport on a firm basis gas reserves available to Consolidated in the Gulf of Mexico. Tennessee would receive the volumes at points in Allen and Acadia Parishes, Louisiana, and at other mutually agreeable receipt points, and deliver the volumes to Consolidated at specified delivery points on Consolidated's pipeline system in West Virginia, Ohio, Pennsylvania, and New York.

Tennessee states that it would transport and deliver gas to Consolidated in those rate zones in which Consolidated purchases gas from Tennessee at or above the minimum bill level (currently 66-2/3 percent of the monthly component of Consolidated's annual volumetric limit). Authorization is sought to transport quantities of gas up to an amount equal to the difference between the daily volumes purchased by Consolidated from Tennessee in the rate zone and the contract demand for the zone.

Tennessee proposes to charge Consolidated for the transporation service a rate equal to the non-gas component of Tennessee's CD commodity rate for the zone in which the gas is delivered. Tennessee would retain 5.05 percent of the volumes it receives for transportation for fuel and use requirements.

Comment date: July 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Mobile Bay Pipeline Company

[Docket No. CP85-332-001]

June 28, 1985.

Take notice that on May 31, 1985, Mobile Bay Pipeline Company (MBPC), P.O. Box 1478, Houston, Texas 77001, successor in this proceeding to United Gas Pipe Line Company (United), filed in Docket No. CP85-332-001 an amendment pursuant to section 7(c) of the Natural Gas Act, to the application for a certificate of public convenience and necessity heretofore filed by United in Docket No. CP85-332-000 regarding the construction and operation of approximately 24.5 miles of 30-inch pipeline (the Mobile Bay pipeline), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

MBPC requests authority to construct and operate approximately 24.5 miles of 30-inch pipeline from the tailgate of the Mobil Oil Exploration and Producing Southeast, Inc. (MOEPSI), processing plant to United's existing system, all in Mobile County, Alabama. MBPC also requests authority to transport natural gas for ANR Pipeline Company (ANR).

MBPC asserts that it is a general partnership formed by affiliates of ANR and United for the purpose of constructing, owning, and operating the Mobile Bay pipeline to transport significant natural gas reserves anticipated to be produced in the Mobile Bay area, offshore Alabama, and delivered to the Mobile Bay pipeline.

MBPC states that the total estimated cost of the proposed facilities is $18,105,000 which would be financed through equal equity contributions of 40 percent by MBPC's partners, with the balance through the use of long-term financing. It is asserted that the proposed facilities would initially provide transportation for ANR for up to 70,000 Mcf of natural gas per day and that the throughput is expected to increase to 268,000 Mcf per day in the third year of operation and by the sixth year up to 600,000 Mcf per day.

MBPC advises that it has entered into a transporation agreement with ANR for a 15-year term of service. The proposed transporation rate for the initial interim two-year transportation service has a commmodity charge of 5.2 cents per Mcf of gas transported. It is explained that for the first year of operation after the interim period and continuing during the term of the service a demand rate per Mcf of the contract demand would be charged. The demand rate would recover certain unrecovered costs incurred during the interim period of operation, it is asserted.

Comment date: July 19, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP85-600-000]

June 28, 1985

Take notice that on June 10, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP85-600-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon a 39-mile segment of 30-inch interstate pipeline and the transportation of gas through the segment and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 53.9 miles of 24-inch and 30-inch pipeline and one compressor station for the purpose of interconnecting Natural's existing Amarillo and Gulf Coast lines to the proposed facilities of Texoma Interstate Pipeline Company (Texoma), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural states that its Amarillo and Gulf Coast lines do not interconnect in the producing regions of Texas and Oklahoma and that over the years it has experienced periods of gas supply imbalance between the two lines which have restricted the supply available to meet market requirements. Natural states further that while there is a primary need to move gas supplies from the Amarillo to Gulf Coast systems, the proposed facilities would also be designed to move gas in the opposite direction in order to increase Natural's operational flexibility.

Natural further states that the most efficient and economical proposal to attain this operational flexibility would be to interconnect its Amarillo and Gulf Coast systems through an arrangement with Texoma which, in a companion application filed at Docket No. CP85-601-000, is requesting authorization, *inter alia*, to acquire, construct, and operate interstate pipeline facilities and to transport gas for Natural through such facilities.

Natural proposes to construct and operate approximately 53.9 miles of 24-

inch and 30-inch pipeline in Carter, Garvin, and Murray Counties, Oklahoma, and Upshur, Gregg, and Harrison Counties, Texas, and certain compressor facilities at a new compressor station in Carter County, Oklahoma, to interconnect its existing Amarillo and Gulf Coast mainlines with Texoma. Natural also proposes to abandon a 39-mile interstate segment of converted 30-inch oil pipline located in Bryan County, Oklahoma, and Fannin and Lamar Counties, Texas. Natural states that such segment would be acquired by Texoma as a part of the 212-mile interstate pipeline transportation system proposed by Texoma in its application.

Natural states that the estimated cost of the proposed pipeline and compressor facilities (including $914,000 in non-jurisdictional facilities) is $36,943,000 (exclusive of filing fees) which cost would initially be financed with funds on hand, borrowings under Natural's revolving credit arrangements or short-term financing.

Comment date: July 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16064 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-570-000 et al.]

Northern Indiana Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

June 28, 1985.

Take notice that the following filings have been made with the Commission:

1. Northern Indiana Public Service Company

[Docket No. ER85-570-000]

Take notice that on June 13, 1985, Northern Indiana Public Service Company (Company) tendered for filing as initial rate schedules, service agreements with the Towns of Argos and Bremen providing for:

Service Schedule C—Operating Reserves.

The Company requests an effective date of July 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon the Towns of Argos and Bremen and the Public Service Commission of Indiana.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. ER85-571-000]

Take notice that on June 13, 1985, Union Electric Company (Union Electric) tendered for filing First Amendment dated February 20, 1985, to the Interconnection Agreement of February 18, 1972 between Central Illinois Public Service Company, Illinois Power Company, and Union Electric Company.

Union Electric states the purpose of the Amendment is to provide for a new Service Schedule G, Term Energy.

Union Electric requests an effective date of April 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER85-583-000]

Take notice that on June 20, 1985, Niagara Mohawk Power Corporation (Niagara), tendered for filing as a rate schedule, an agreement between Niagara and the Rochester Gas and Electric Corporation (Rochester) dated May 15, 1985.

Niagara presently has on file an agreement with Rochester dated April 12, 1973 last amended on May 22, 1984. This agreement is designated as Niagara Power Corporation Rate Schedule F.E.R.C. No. 76. This new agreement is being transmitted as a supplement to the existing agreement.

The original April 12, 1973 agreement states that Niagara will provide for the transmission of power and energy to and from the Power Authority of the State of New York at the Blenheim-Gilboa Pumped Storage Plant for Rochester. This supplement revises the rate to be paid by Rochester for the use of Niagara's facilities. The monthly charge will be updated on October 1 of each succeeding year using Niagara's most recent annual fixed charges.

Niagara requests an effective date of October 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Rochester Gas & Electric Corporation and the Public Service Commission of the State of New York.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER85-584-000]

Take notice that on June 20, 1985, South Carolina Electric & Gas Company

(SCE&G) tendered for filing a proposed change in its 1973 service contract with rural electric cooperatives. Under the proposed change all rights held under the contract by Palmetto Electric Cooperative, Inc. are assigned to Central Electric Power Cooperative, Inc.

The proposed change arises from an agreement between Palmetto and Central assigning the above contract rights. The agreement has been approved by the Administrator of the Rural Elecrification Administration. The proposed effective date is December 3, 1979, and SCE&G and therefore requests waiver of the Commission's notice requirements.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Louisiana Power & Light Company

[Docket No. ER85-585-000]

Take notice that on June 20, 1985, Louisiana Power & Light Company (LP&L) tendered for filing a Notice of Cancellation of an Agreement dated October 3, 1984 providing for the transmission of up to 5 mw of power and energy to the City of Minden, Louisiana from the City of Lafayette, Louisiana (City).

LP&L requests an effective date of July 31, 1985, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing was mailed to the City of Lafayette, Louisiana.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER85-569-000]

Take notice that on June 11, 1985, Portland General Electric Company in accordance with the Commission's order of May 26, 1977, accepting for filing Portland General Electric Company's FPC Electric Tariff Original Volume 1, and director Lawrence R. Anderson's letter of March 23, 1984 in Docket No. ER84-268-000, submitted for filing a summary of Portland General Electric Company's non-firm energy sales under the above Tariff for April of 1985 together with a proposed Notice of Filing for use by the Commission. In addition, a new service agreement under that Tariff with Eugene Water and Electric Board is filed herewith.

Portland General Electric Company hereby applies for waiver of the notice requirements pursuant to section 205(d) of the Federal Power Act and § 35.11 of the Commission's regulations and requests this filing be made effective May 31, 1985, a date prior to the date of this filing. Waiver of the notice requirement is not expected to have an adverse impact upon Portland General Electric Company or any other rate schedules or upon any of the purchasers described in this filing.

Copies of this filing have been served upon all parties with executed service agreements, all parties to the Inter-company Pool Agreement (revised), the intervenors in Docket ER 77-131 and the Oregon Public Utility Commissioner.

Comment date: July 12, 1985, in accordance with standard Paragraph E at the end of this notice.

7. MDU Resources Group, Inc.

[Docket No. ES85-43-000]

Take notice that on June 19, 1985, MDU Resources Group, Inc. (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, proposing to issue and sell not more than $50 million of First Mortgage Bonds.

Comment date: July 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. The Detroit Edison Company

[Docket No. ES85-45-000]

Take notice that on June 24, 1985, The Detroit Edison Company filed an Application, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue from time to time, on or before September 30, 1987, in a aggregate principal amount not to exceed $1.2 billion at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

Comment date: July 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16063 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-461-000]

Kansas Gas and Electric Co.; Order Accepting for Filing and Suspending Rates, Granting Interventions, Denying Motion To Reject, Granting Waiver, Denying Motion for Joint Hearing, and Establishing Hearing and Price Squeeze Procedures

Issued: June 28, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Charles G. Stalon.

On April 29, 1985, Kansas Gas and Electric Company (KG&E) filed:[1] (1) A proposed increase in rates for firm power service to 15 full requirements municipal customers,[2] seven partial requirements municipal customers,[3] Missouri Public Service Company (MPSC) and Kansas Electric Power Cooperative (KEPCO); (2) an increase in rates for transmission service to eight municipal customers,[4] the Kansas Power and Light Company (KP&L) and KEPCO; (3) proposed new service schedules for Maintenance and Emergency Service (ME), Reserve Capacity (RC), Supplemental Energy (SE) and System Control and Load Dispatching Service (SC) to KEPCO; and (4) proposed SC service schedules to ten municipal customers.[5] In addition,

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[1] *See* Attachment for rate schedule designations.

[2] The City of Mindenmines, Missouri and the Cities of Arcadia, Arma, Blue Mound, Bronson, Elsmore, Erie, Girard, Haven, La Harpe, Moran, Mount Hope, Mulberry, Oxford and Savonburg, Kansas. Pursuant to the terms of their contracts, rate increases to the full requirements municipal customers (with the exception of Cities of Girard and Oxford) may become effective only on a prospective basis after a final Commission order

[3] The Cities of Augusta, Burlington, Coffeyville, Mulvane, Neodesha, Wellington and Winfield, Kansas.

[4] The Cities of Chanute, Coffeyville, Fredonia, Iola, Mulvane, Neodesha, Wellington and Winfield, Kansas.

[5] The Cities of Augusta, Burlington, Chanute, Coffeyville, Fredonia, Iola, Mulvane, Neodesha, Wellington and Winfield, Kansas. KG&E states that the proposed service schedules ME and RC to KEPCO are required to replace KEPCO's ownership share of Wolf Creek when the plant is unavailable, while Service Schedule SE is needed to supplement KEPCO's firm takes. Additionally, KG&E states that the proposed new Service Schedule SC is designed to recover the costs of maintaining spinning reserves and the cost of scheduling and dispatching power resources of the generating municipal customers and KEPCO.

KG&E proposes to cancel an unused transmission service schedule for the City of Chanute and an expired peaking power service schedule with KEPCO.

The proposed firm rates would result in an overall increase in revenues of approximately $3.4 million (23%), based upon the 12 month test period ending December 31, 1985. KG&E requests an effective date for the firm power rates of the later of June 30, 1985, or the date the utility's Wolf Creek Nuclear Station (Wolf Creek) enters commercial service for those customers whose contracts allow unilateral rate changes. KG&E requests the same effective date for all new service schedules. For all customers (except the City of Erie) whose contracts permit only prospective rate changes, KG&E requests that the proposed rates become effective on the date of the final Commission order herein. Because the City of Erie's (Erie) contract expires on November 10, 1986, and KG&E expects that this date will precede a final Commission order, the company requests an effective date of November 11, 1986, for Erie. In the event that the commercial operations of Wolf Creek is delayed beyond 120 days from the filing date, KG&E requests waiver of the notice requirements.

Notice of the company's filing was published in the Federal Register,[6] with comments due on or before May 20, 1985. Timely motions to intervene were filed by the Kansas Municipal Utilities (Cities) [7] and, jointly, by KEPCO and its member cooperatives (collectively referred to as KEPCO). Cities request a five month suspension. In support, they raise several cost of service issues. [8] Cities also request rejection of Service Schedule SC for the Cities of Chanute, Iola and Fredonia, Kansas, on the ground that the firm power rates to these cities are fixed rates under the *Mobil-Sierra* [9] doctrine, and that KG&E's filing of Service Schedule SC is an attempt to circumvent the fixed rates. In addition, Cities request that a joint hearing be convened with the Kansas Corporation Commission as to the prudence of KG&E's investment and inclusion in rate base of Wolf Creek. They state that expedited procedures under Rule 717 of the Commission's Rules of Practice and Procedure (18 CFR 385.717) should not be established in this docket due to the complexity of the issues. Lastly, Cities allege price discrimination and price squeeze.

KEPCO requests a five month suspension for firm power and transmission rates, and that Service Schedules RC, ME, SE and SC be suspended, to become effective upon commencement of operation of Wolf Creek. In support, KEPCO raises several cost of service issues.[10] In addition, KEPCO requests that the Commission institute price squeeze procedures.

On May 31, 1985, the Kansas Power and Light Company (KP&L) filed an untimely motion to intervene. KP&L requests that the Commission set KG&E's transmission tariff for hearing. KP&L alleges that the proposed rates for transmission service are excessive. In addition, KP&L objects to the requirement that it purchase power from KG&E to make up line losses. On June 6, 1985, the State Corporation Commission of the State of Kansas (Kansas Commission) filed an untimely motion to intervene. The Kansas Commission does not, however, raise any specific issues in its pleading.

On June 4, 1985, KG&E filed timely answers to the interventions of Cities and KEPCO. While not opposing the interventions, KG&E objects to KEPCO's cooperative members being granted intervenor status. The company denies that a five month suspension is warranted. Further, KG&E states that Cities' and KEPCO's price squeeze allegations should be rejected and that Cities' request for joint hearings with the Kansas Commission should be denied. With respect to Rate Schedules RC, ME, SE and SC, KG&E contends they are initial rates not subject to suspension because they provide for a new service to KEPCO and its members. KG&E also denies that it has violated contractual agreements with its customers.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make Cities and KEPCO parties to this proceeding.

Notwithstanding the company's opposition to the intervention of KEPCO's cooperative members, we find that good cause exists to grant their motion to intervene. KEPCO's cooperative members are served by KG&E and have a direct interest in the outcome of this proceeding. Further, given their interests, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay, we shall grant KP&L's and the Kansas Commission's untimely motions to intervene.

We disagree with Cities' claim that KG&E's filing of Rate Schedule SC as to the Cities of Chanute, Iola, and Fredonia violates contractual provisions with those customers which prohibit further Rate Schedule A rate increases. These three cities are partial requirements customers who require transmission service from KG&E for power and energy generated outside KG&E's load control area. Service Schedule SC is proposed by KG&E to recover scheduling and dispatching costs related to the outside power being transmitted. Schedule SC specifically excludes firm demands, which are covered by Schedule A, from the billing demand. Therefore, we find that SC billings are not additional charges for firm service and do not violate fixed rates for firm service. Accordingly, we shall deny Cities' motion to reject Schedule SC.

We disagree with KG&E's characterization of Schedules ME, RC, SE and SC as initial rate schedules. KG&E is already providing transmission service to KEPCO under the transmission agreement filed in Docket No. ER82-257. The instant filing represents an additional service to KEPCO and, thus, constitutes a change in rate subject to the Commission's suspension and refund powers under section 205 of the Federal Power Act.

Our preliminary review of the company's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. Accordingly, we shall accept KG&E's rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. In the instant

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[6] 50 *FD* 20280 (1985).

[7] Kansas Municipal Utilities include the Cities of Augusta, Burlington, Chanute, Coffeyville, Girard, Iola, Mulvane, Neodesha, Wellington and Winfield, Kansas, who are partial requirements customers of KG&E, and the Cities of Arcadia, Arma, Blue Mound, Elsmore, Erie, Haven, La Harpe, Moran, Mount Hope, Mu lberry, Oxford and Savonburg, Kansas, who are full requirements customers of KG&E.

[8] The issues raised include: (1) Excessive rate of return; (2) improper allocation of transmission costs; (3) improper calculation of deferred tax procisions; and (4) improper depreciation rates.

[9] *United Gas Pipeline Co.* v. *Mobil Gas Service Corp.*, 350 U.S. 332 (1956); *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[10] The issues raised include: (1) Inaccurate in-service date for Wolf Creek; (2) improper allocation of Wolf Creek costs to KEPCO; (3) excessive rate of return; (4) excessive fuel stock; (5) improper treatment of deferred tax deficiency; (6) improper depreciation rates for Wolf Creek; (7) excessive operation and maintenance expense projections; and (8) rate design.

proceeding, our review indicates that the proposed increased rates for firm power and transmission service and the proposed rates for Service Schedules ME, SC, RC and SE may not produce substantially excessive revenues. Accordingly, for those customers whose contracts permit unilateral rate changes, we shall accept the instant submittal for filing and suspend it to become effective on the later of July 1, 1985, or the commercial operation date of Wolf Creek. For those customers (except Erie) whose contracts permit only prospective rate changes, we shall accept the rates for filing to become effective on the date of the final Commission order herein. We shall accept the rates for service to Erie to become effective on November 12, 1986, subject to refund. Finally, we shall accept the cancellations of service schedules for the City of Chanute and KEPCO to become effective on June 30, 1985.

As noted, the company requests waiver of the notice requirements. We conclude that good cause exists to waive these requirements because this will serve to match Wolf Creek's commercial operation date with the effectiveness of the rates.

We shall deny Cities' motion for a joint hearing with the Kansas Commission on the Wolf Creek prudence issue. As stated in Rule 1304(a) of the Commission's Rules of Practice and Procedure (18 CFR 385.1304(a)), joint boards are designed for use in "unusual cases," and as a means of relief to the Commission when it might find itself unable to hear and determine cases before it, in the usual course, without undue delay. KG&E's sales to Cities are subject to the exclusive jurisdiction of this Commission. We, therefore, see no reason why this Commission, acting in its usual capacity, cannot adequately decide the issues raised in this proceeding. Further, since the Kansas Commission has intervened, it is a party to the proceeding and thus, could not simultaneously act as a judge or advisor on the Wolf Creek prudence issue. For these reasons, we believe it would be inappropriate to institute either of the two types of joint hearings mentioned in Rule 1305 of the Commission's Rules of Practice and Procedure (18 CFR 1305).[11]

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Co.*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze raised by the intervenors.

The Commission Orders:

(A) The motion to intervene of DEPCO's member cooperatives, KP&L, and the Kansas Commission are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Cities' motion to reject Schedule SC for the Cities of Chanute, Iola and Fredonia is hereby denied.

(C) KG&E's request for waiver of the notice requirements is hereby granted.

(D) The firm power, transmission, and Service Schedule ME, SC, RC, and SE rates to the Cities of Girard, Oxford, Augusta, Burlingtron, Chanute, Coffeyville, Fredonia, Iola, Mulvane, Neodesha, Wellington, and Winfield, Kansas, MPSC, KP&L and KEPCO one hereby accepted for filing to become effective on the later of July 1, 1985, or the commercial operation date of the Wolf Creek Nuclear Station, subject to refund.

(E) The rates to the City of Erie, Kansas, are hereby accepted for filing to become effective on November 12, 1986, subject to refund.

(F) The rates to the City of Mindenmines, Missouri, and the Cities of Arcadia, Arma, Blue Mound, Bronson, Elsmore, Haven, La Harpe, Moran, Mount Hope, Mulberry, and Savonburg, Kansas are hereby accepted for filing to become effective prospectively on the date of the final Commission order herein.

(G) The proposed cancellations of service schedules for the City of Chanute, Kansas and KEPCO are hereby accepted for filing to become effective, without suspension or hearing, on June 30, 1985.

(H) KG&E shall advise the Commission within fifteen (15) days after the in-service date of Wolf Creek.

(I) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of KG&E's rates.

(J) Cities' request for a joint hearing concerning Wolf Creek is hereby denied.

(K) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(L) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(M) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(N) Docket No. ER85-461-000 is hereby terminated. The evidentiary proceedings established herein are designated as Docket No. ER85-461-001.

(O) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

ATTACHMENT—KANSAS GAS & ELECTRIC COMPANY RATE SCHEDULE DESIGNATIONS

[Docket No. EP85-461-000]

Designation	Other party	Description
(1) Supplement No. 5 to Rate Schedule FPC No. 124 (Supersedes Supplement No. 14).	City of Arcadia	PWM-785.
(2) Supplement No. 16 to Rate Schedule FPC No. 114 (Supersedes Supplement No. 15).	City of Arma	PWM-785.
(3) Supplement No. 14 to Rate Schedule FPC No. 117 (Supersedes Supplement No. 13).	City of Blue Mound	PWM-785.
(4) Supplement No. 13 to Rate Schedule FPC No. 120 (Supersedes Supplement No. 12).	City of Bronson	PWM-785.
(5) Supplement No. 11 to Rate Schedule FPC No. 116 (Supersedes Supplement No. 10).	City of Elsmore	PWM-785.
(6) Supplement No. 16 to Rate Schedule FPC No. 122 (Supersedes Supplement No. 15).	City of Haven	PWM-785.

[11] With regard to concurrent hearings, Rule 1305(g) specifically provides that cooperation between two or more commissions in such a hearing precludes either from taking the position of an advocate or litigant.

ATTACHMENT—KANSAS GAS & ELECTRIC COMPANY RATE SCHEDULE DESIGNATIONS—Continued

[Docket No. EP85-461-000]

Designation	Other party	Description
(7) Supplement No. 15 to Rate Schedule FPC No. 115 (Supersedes Supplement No. 14).	City of La Harpe	PWM-785.
(8) Supplement No. 15 to Rate Schedule FPC No. 125 (Supersedes Supplement No. 14).	City of Mindenmines	PWM-785.
(9) Supplement No. 14 to Rate Schedule FPC No. 116 (Supersedes Supplement No. 13).	City of Moran	PWM-785.
(10) Supplement No. 14 to Rate Schedule FPC No. 123 (Supersedes Supplement No. 13).	City of Mount Hope	PWM-785.
(11) Supplement No. 15 to Rate Schedule FPC No. 119 (Supersedes Supplement No. 14).	City of Mulberry	PWM-785.
(12) Supplement No. 10 to Rate Schedule FPC No. 121 (Supersedes Supplement No. 9).	City of Savonburg	PWM-785.
(13) Supplement No. 5 to Rate Schedule FERC No. 159 (Supersedes Supplement No. 4).	City of Erie	PWM-785.
(14) Supplement No. 6 to Rate Schedule FERC No. 157 (Supersedes Supplement No. 5).	City of Girard	PWM-785.
(15) Supplement No. 8 to Rate Schedule FERC No. 135 (Supersedes Supplement No. 7).	City of Oxford	PWM-785.
(16) Supplement No. 9 to Rate Schedule FERC No. 152 (Supersedes Supplement No. 8).	City of Missouri Public Service Company.	PWM-785.
(17) Supplement No. 4 to Supplement No. 15 to Rate Schedule FPC No. 93.	Kansas Power and Light Company	Revised Rates under Service Schedule M.
(18) Supplement No. 16 to Rate Schedule FERC No. 151 (Cancels Supplement No. 7).	Kansas Electric Power Cooperative	Revised Rates under Service Schedules A, B, and D and Cancellation of Service Schedule C.
(19) Supplement No. 17 to Rate Schedule FERC No. 151.	do	Service Schedule RC.
(20) Supplement No. 18 to Rate Schedule FERC No. 151.	do	Service Schedule SC.
(21) Supplement No. 19 to Rate Schedule FERC No. 151.	do	Service Schedule ME.
(22) Supplement No. 20 to Rate Schedule FERC No. 151.	do	Service Schedule SE.
(23) Supplement No. 19 to Rate Schedule FERC No. 134.	City of Augusta	Revised Rates under Service Schedule A.
(24) Supplement No. 20 to Rate Schedule FERC No. 134.	do	Service Schedule SC.
(25) Supplement No. 10 to Rate Schedule FERC No. 144.	City of Burlington	Revised Rates under Service Schedule A.
(26) Supplement No. 11 to Rate Schedule FERC No. 144.	do	Service Schedule SC.
(27) Supplement No. 1 to Supplement No. 20 to Rate Schedule FERC No. 128 (Cancels Supplement No. 5).	City of Chanute	Amendment to and Revised Rates under Service Schedule E and Cancellation of Service Schedule T.
(28) Supplement No. 21 to Rate Schedule FERC No. 128.	do	Service Schedule SC.
(29) Supplement No. 12 to Rate Schedule FERC No. 149.	City of Colleyville	Amendment to and Revised Rates under Service Schedules A and E.
(30) Supplement No. 13 to Rate Schedule FERC No. 149.	do	Service Schedule SC.
(31) Supplement No. 1 to Supplement No. 14 to Rate Schedule FPC No. 87.	City of Fredonia	Amendment to and Revised Rates under Service Schedule E.
(32) Supplement No. 15 to Rate Schedule FPC No. 87.	do	Service Schedule SC.
(33) Supplement No. 1 to Supplement No. 13 to Rate Schedule FPC No. 89.	City of Iola	Amendment to and Revised Rates under Service Schedule E.
(34) Supplement No. 14 to Rate Schedule FPC No. 89.	do	Service Schedule SC.
(35) Supplement No. 12 to Rate Schedule FERC No. 154.	City of Mulvane	Amendments to and Revised Rates under Service Schedules A and E.
(36) Supplement No. 13 to Rate Schedule FERC No. 154.	do	Service Schedule SC.
(37) Supplement No. 12 to Rate Schedule FERC No. 153.	City of Neodesha	Amendments to and Revised Rates under Service Schedules A and E.
(38) Supplement No. 13 to Rate Schedule FERC No. 153.	do	Service Schedule SC.
(39) Supplement No. 17 to Rate Schedule FERC No. 156.	City of Wellington	Amendment to and Revised Rates under Service Schedules A and E.
(40) Supplement No. 18 to Rate Schedule FERC No. 156.	do	Service Schedule SC.
(41) Supplement No. 12 to Rate Schedule FERC No. 155.	City of Winfield	Amendments to and Revised Rates under Service Schedules A and E.
(42) Supplement No. 13 to Rate Schedule FERC No. 155.	do	Service Schedule SC.

[FR Doc. 85-16058 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS72-413 et al.]

Morris Mizel & Mizel Resources, a Grantor Trust, et al.; Applications for Small Producer Certificates[1]

July 1, 1985.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before July 15, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS72-413	3-25-85 [1]	Morris Mizel and Mizel Resources, a Grantor Trust.
CS85-78-000	5-28-85	The Estate of Tift Milford and Milford Corporation.
CS85-78-000	6-10-85	Will McCasland, Inc.
CS85-79-000	6-10-85	Cherry Ventures, Inc.
CS85-80-000	6-11-85	Solar Petroleum, Inc.
CS85-81-000	6-10-85	Master Petroleum & Development Company, Inc.
CS85-83-000	6-03-85	Tejas Power Corporation.
CS85-84-000	6-17-85	Hichs Oil & Gas, Inc.
CS85-85-000	6-17-85	B.R. Eubanks, M.D. (Diamond Oil International
CS85-86-000	6-17-85	Hicks Production Company.

[1] Letter dated March 19, 1985, requesting that Mizel Resources, a Grantor Trust be added as small producer certificate co-holder.

[FR Doc. 85-16059 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. ER85-475-000, ER85-476-000, and ER85-493-000]

New England Power Co.; Order Accepting for Filing and Suspending Rates, Granting Withdrawal, Noting and Granting Interventions, Granting and Denying Waivers, Granting and Denying Motions for Summary Disposition, Consolidating Dockets, and Disapproving Automatic Equity Clauses

Issued: June 28, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Charles G. Stalon.

On May 1, 1985, New England Power Company (NEPCO) tendered for filing a proposed superseding Transmission and Interconnection Agreement providing for transmission service to the Vermont Electric Power Company, Inc. (VELCO) that would result in an increase of approximately $650,000 (Docket No. ER85-475-000). On the same date, NEPCO also tendered for filing a revision to its FERC Electric Tariff Original Volume No. 3 that would result in an increase of approximately $690,000 for transmission of nonfirm energy entitlements to tariff customers (Docket No. ER85-476-000). On May 8, 1985, NEPCO tendered for filing an agreement to begin transmission service to its affiliate, Narragansett Electric Company (Docket No. ER85-493-000) that would result in annual revenues of approximately $7,000. NEPCO requests a waiver of the 60-day notice requirement in order to allow the proposed rates in Docket No. ER85-475.000 to become effective May 1, 1985. It requests an effective date of July 1, 1985 for the proposed rates in Docket Nos. ER85-476-000 and ER85-493-000.[1]

Notice of NEPCO's filing in Docket Nos. ER85-475-000 and ER85-476-000 was published in the **Federal Register**[2] with comments due on or before May 2, 1985. Notice of NEPCO's filing in Docket No. ER85-493-000 was published in the **Federal Register**[3] with comments due on or before May 31, 1985.

VELCO filed a timely motion to intervene in Docket No. ER85-475-000. It requested that the filing be suspended for one day and that a hearing be ordered to permit NEPCO to file additional evidence in support of its positions on several issues. It objected to waiver of the 60-day notice provision and requested summary dismissal of NEPCO's filing only if a hearing is not set. VELCO raises a variety of cost of service and rate design issues.[4] Central Vermont Public Service Corporation (Central Vermont) also filed a timely motion to intervene in this docket.

On June 6, 1985, NEPCO filed an answer. While not opposing the motions to intervene, the request for a one-day suspension, or the request for a hearing, NEPCO argued that there is good cause to waive the 60-day notice provision. NEPCO asserts that each of VELCO's objections lack merit.

NEPCO's municipal customers (Municipal Customers) filed a timely motion to intervene in Docket No. ER85-476-000. They requested a five-month suspension. They also requested summary rejection of NEPCO's proposed treatment of Investment Tax Credits (ITCs). On May 24, 1985, Boston Edison Company (Boston Edison) filed an untimely motion to intervene in this docket, stating that there was good cause for the late filing because it was not served with a copy of NEPCO's filing. The Municipal Customers and Boston Edison raise a variety of cost of service and rate design issues.[5]

On June 6, 1985, NEPCO filed an answer to the Municipal Customers' and Boston Edison's pleadings. While not opposing the motions to intervene, NEPCO opposes summary judgment on the ITC issue. It also opposes a five month suspension or rejection of the filing. It asserts that a one-day suspension is more appropriate. NEPCO asserts that the intervenors' objections to the filing are unwarranted.

On June 11, 1985, the Municipal Customers filed a motion for leave to file a response to NEPCO's June 6 answer. However, the Commission's rules[6] do not allow such an answer. Therefore, we deny the motion.

No interventions were filed in Docket No. ER85-493-000.

On June 27, 1985, NEPCO filed a motion to withdraw its filing in Docket No. ER85-493-000. As grounds for its request, NEPCO states that Narragausett Electric Company will not receive the allocation of power from the New York Power Authority for which the transmission service was needed.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,[7] the timely motions to intervene make VELCO and Central Vermont parties to the proceeding in Docket No. ER85-475-000 and make the Municipal Customers parties to the proceeding in Docket No. ER85-476-000. Furthermore, we find that good cause exists to grant Boston Edison's untimely intervention in Docket No. ER85-476-000, given its direct interest as a transmission customer in the outcome of this proceeding and the apparent absence of any undue prejudice or delay.

We shall grant NEPCO's motion to withdraw its filing in Docket No. ER85-493-000. To the extent necessary, we shall waive the Commission's regulations so as to allow the withdrawal.

We find that summary disposition is warranted with respect to one aspect of the remaining dockets. In this filing, NEPCO has proposed a variable rate of return formula [8] which is unacceptable for several reasons. The proposed equity return provision provides for equity adjustment based on such things as the percentage increase in the GNP price deflator and a dilution allowance which compensates shareholders for equity sold below market price as well as other indices. NEPCO's use of historical market indicators and average equity premiums is a form of risk premium analysis which is inappropriate.[9] There

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[1] *See* Attachment for rate schedule designations.

[2] 50 FR 20583, 20.584 (May 17, 1985).

[3] 50 FR 21343 (May 23, 1983).

[4] The issues raised include: (1) NEPCO's use of a formula for computing a rate of return on equity; (2) a provision which limits VELCO's right to transmit power on NEPCO's facilities to entitlements to be used to serve VELCO's load; (3) the use of a "reserve factor" to adjust VELCO's rate; and (4) alleged lack of specificity as to how the loads for which VELCO will be billed will be measured.

[5] The issues raised include: (1) The formula for computing a rate of return on equity; (2) the treatment of Investment Tax Credits (ITCs); (3) the allocation of Administrative and General (A&G) expense; and (4) an allegedly excessive estimate of support revenues and expenses as a result of including transmission support payments for a unit which is not yet in service.

[6] 18 CFR 385.213(a)(2).

[7] 18 CFR 385.214.

[8] The formulistic equity return is computed to reflect (1) the current weighted average return on three money market indicators: the yield to maturity for Moody's "A" rated Public Utility Bonds; the yield to maturity for 10-year Constant Maturity Treasury Bonds; and the annualized percentage increase in the Gross National Product (GNP) price deflator plus (2) a risk premium equal to the difference between the most recent 20-year average yield for the money market indicators listed above and the most recent 20-year average annual yield for Moody's Electric Utility Common Stocks, including the ten-year growth in share dividends for such stocks. The proposed formula for computation of equity return also contains a provision (dilution allowance) which compensates NEPCO's shareholders for the sale of common equity shares at a market price below book value.

[9] *See* Consolidated Gas Supply Corporation, 24 FERC ¶ 61,046 (July 12, 1983).

is no direct relationship between historical risk premiums and a current cost of equity under constantly changing financial conditions, and NEPCO has not even attempted to demonstrate one. The formula provides that, if any of the indices used are discontinued or modified, NEPCO may substitute an unspecified similar index. The formula provides that, if the resulting return on equity for two consecutive months is lower than the average of returns approved within the most recent twelve months by the state regulatory commissions of the investor-owned utilities reported in the Argus Service Publication, NEPCO may substitute such average return on equity.[10] This adjustment would not only subordinate this Commission's regulation to that of state commissions, but it is also an implicit admission by NEPCO that its risk premium formula determination may not produce a proper return on equity. Finally, market price to book value is already reflected in the market indicators utilized and use of a dilution allowance results in a doubling of costs. As a result of these objections to NEPCO's proposed formula for rate of return, we shall reject the return formula and accept for filing a rate which incorporates a fixed return on common equity of 15.55% (the initial result of the formula).[11] NEPCO shall file an appropriate rate schedule and cost support within 30 days.

Further, we hereby announce our intention to reject all future rate filings which contain a formula rate which automatically adjusts the return on common equity. Automatic adjustment clauses are exceptions to the notice and filing requirements of the Federal Power Act. Even where we have permitted the use of a full cost of service formula, we have not allowed the equity return to be adjusted automatically.[12]

The use of an automatic formula rate for return on equity is inconsistent with our recent generic approach to equity return for electric utilities. In part 37 of our regulations, we have provided for the determination of the average cost of common equity for the jurisdictional operations of electric utilities and a quarterly indexing procedure to update the estimate and establish a benchmark rate of return on common equity for use in individual rate cases.[13] Despite the availability of the quarterly update, the benchmark return on equity used to evaluate a rate is the one which is in effect when a rate filing is made, not a quarterly changing benchmark throughout the duration of the rate. In other words, in RM80-36-000, we thoroughly analyzed our approach to determining rate of return on equity. In light of the fact that the Commission has so recently visited the question and selected a generic approach which does not include automatically adjusting equity returns, we believe it would be administratively wasteful to continue to consider this issue in case by case adjudications. We shall therefore reject filings containing automatic equity clauses at the threshold as patently deficient.[14]

We shall deny the Municipal Customers' request for summary disposition on the ITC issue in Docket No. ER85-476-000. Although NEPCO is not crediting these transmission customers with a ratable portion of ITC, this is not uncommon in the industry in the pricing of nonfirm services such as the tariff PTF service here. Utilities typically share ITC benefits only with their firm customers on whose behalf the investment which qualifies for ITC was undertaken. This in no way results in a flowing of the ITC to retained earnings.

Our preliminary examination of NEPCO's filings and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC § 61,189 (1982), we explained that, where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the rates in these three dockets, as revised with regard to the rate of return in Docket No. ER85-476-000 as ordered below, may not yield substantially excessive revenues. NEPCO requests waiver of the 60-day notice provision in Docket No. ER85-475-000 on the grounds that the services which would be covered by the unexecuted Transmission and Interconnection Agreement between NEPCO and VELCO were previously covered by an Interconnection Contract which expired on May 1, 1985. NEPCO states that the parties are still negotiating about the terms and conditions of the service. This does not constitute good cause for a waiver, however. NEPCO could have filed the unexecuted Agreement earlier. Thus, we shall deny the waiver. Therefore, we shall suspend the rates in Docket Nos. ER85-475-000 and ER85-476-000 for one day from 60 days after filing to become effective on July 2, 1985, subject to refund.

We find that common questions of law and fact may be presented in Docket Nos. 85-475-000 and ER85-476-000. As a result, we shall consolidate those dockets for purposes of hearing and decision.

The Commission orders:

(A) Boston Edison Company's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Summary rejection is hereby ordered, as noted in the body of this order, with respect to NEPCO's proposed formula for rate of return. NEPCO is hereby directed to submit within 30 days of the date of this order rate schedule amendments incorporating a fixed return on common equity of 15.55% and appropriate cost support.

(C) The Municipal Customer's motion for summary rejection of NEPCO's filing in Docket No. ER85-476-000 is hereby denied.

(D) NEPCO's request in Docket No. E85-475-000 for waiver of the 60-day notice provision is hereby denied.

(E) NEPCO's motion to withdraw its filing in Docket No. ER85-493-000 is hereby granted. The Commission waives its regulations to the extent necessary to permit withdrawal. Docket No. ER85-493-000 is terminated.

(F) NEPCO's proposed rates in Docket Nos. ER85-475-000 and ER85-476-000 are hereby accepted for filing as

[10] The *Argus Service Publication* lists the rate of return allowances by state commissions for various investor-owned utilities.

[11] We note that in Docket Nos. ER82-599-000 and ER82-600-000, the Commission accepted NEPCO's submission of this equity return formula. *See*, 20 FERC ¶ 26,403; 20 FERC ¶ 61,286 (1982). Acceptance of the filings does not constitute approval, however. 18 CFR 35.4 (1984). In any event, equity financing constituted approximately 10% of total capital in those filings. The impact of the equity return formula on the overall charge, therefore, was minimal. In the present filings, by contrast, 41% of total capital consists of equity. We also note that, on December 19, 1984, the Director of the Commission's Office of Electric Power Regulation accepted, under delegated authority, a filing by NEPCO (Docket No. ER85-75-000) which also contained the equity return formula, but stated that the utility would be required to file a new request for return on common equity as a change in rate in the event the formula produced an increase in return. That action also does not constitute approval and was without prejudice to any subsequent action by the Commission. In light of the significant impact of the equity provision in these filings, and the fact that NEPCO's formula operates in a manner and contains elements contrary to Commission precedent, we find summary disposition of the formula to be appropriate in this proceeding.

[12] The exceptions are noted in n. 11, above.

[13] 50 FR 21802 (1985) to be codified at 18 CFR 37).

[14] *See* 18 CFR 35.5.

modified by summary disposition, and are suspended for one day from 60 days after filing to become effective on July 2, 1985, subject to refund.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of NEPCO's rates.

(H) Docket Nos. ER85-475-000 and ER85-476-000 are hereby consolidated for purposes of hearing and decision.

(I) Subdocket -000 in Docket Nos. ER85-475-000 and ER85-476-000 are hereby terminated, and Docket Nos. ER85-475-001 and ER85-476-001 are assigned to the hearing ordered in paragraph (G).

(J) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within fifteen (15) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Such conference shall be held for purposes of establishing a procedural schedule, includng the submission of NEPCO's case-in-chief. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(K) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

ATTACHMENT.—NEW ENGLAND POWER COMPANY RATE SCHEDULE DESIGNATIONS

Designation	Other party	Description
	Docket No. ER85-475-000	
(1) Rate Schedule FERC No. 321 (Supersedes Rate Schedule FERC No. 101).	Vermont Electric Power Company	Transmission and Interconnection Agreement.
(2) Supplement No. 1 to Rate Schedule FERC No. 321.	do	Exhibit A, Non-PTF Delivery Points and Facilities.
(3) Supplement No. 2 to Rate Schedule FERC No. 321.	do	Exhibit B, Non-PTF Rate.
(4) Supplement No. 3 to Rate Schedule FERC No. 321.	do	Exhibit C, PTF Delivery Points.
(5) Supplement No. 4 to Rate Schedule FERC No. 321.	do	Exhibit D, PTF Rate.
(6) Supplement No. 5 to Rate Schedule FERC No. 321.	do	Exhibit F, Interconnections.
	Docket No. ER85-476-000	
(7) Second Revised Sheet No. 1 of Schedule II under FERC Electric Tariff, Original Volume No. 3 (Supersedes First Revised Sheet No. 1) and Original Sheet Nos. 1.1-1.7.	Tariff Customers	PTF Rate Provisions and Appendix A (Determination of PTF Rate).

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[Docket Nos. ER85-486-000, ER84-571-001 and Docket No. EL85-28-000]

Utah Power & Light Co. and City of Provo, Utah; Order Accepting for Filing and Suspending Rates, Granting Waivers, Noting Intervention, Establishing Hearing Procedures, and Terminating Dockets

Issued: June 28, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Charles G. Stalon.

On May 6, 1985, Utah Power & Light Company (Utah) filed: (1) An Interconnection Agreement with Mother Earth Industries, Inc. (Mother Earth); (2) an Interconnected Operation Agreement with the City of Provo, Utah (Provo); and (3) a Transmission Service Agreement with Provo. The agreements provide for Utah to wheel power and energy from Mother Earth to Provo and provide emergency backup service.[1] The contracts were executed on December 20, 1984, and service is expected to commence on or about June 1, 1985. Utah requests waiver of the notice requirements to permit an effective date coincident with the date service commences under the agreements.

On April 29, 1985, Provo attempted to file the same agreements on its own initiative in Docket No. EL85-28-000. Provo attempted to file the agreements on its own initaitive because of its concern that Utah had failed to make a timely filing and that this might jeopardize service.

Notice of Utah's filing was published in the **Federal Register,**[2] with comments due on or before May 28, 1985. Provo filed a timely motion to intervene. Provo requests that the Commission expedite acceptance of Utah's filing, initiate an investigation of the proposed rates, and permit Provo to seek, within 30 days, consolidation of this docket with the proceedings in Docket No. ER84-571-001. Provo states that upon acceptance of the agreement in Docket No. ER85-486-000, it will withdraw its application in Docket No. EL85-28-000. In support, Provo states that the proposed rates may be unjust and unreasonable, but it does not wish to delay the commencement of service under the agreements.

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 285.214), the timely motion to intervene serves to make Provo a party to this proceeding.

The proposed Interconnection Agreement with Mother Earth provides for the interconnection of Mother Earth's geothermal facility with Utah's transmission system for the purpose of wheeling power and energy to Provo and specifies the associated rights and obligations of the parties. The agreement specifies no rates since these have been incorporated in Provo's agreement with Utah. The agreement states however, that if additional facilities are later deemed necessary due to voltage changes and/or additional tap lines, and if Mother Earth fails within a reasonable time to install the necessary facilities, Utah will do so and Mother Earth will reimburse Utah for the actual costs incurred. Because the proposed Interconnection Agreement includes no rate provisions, and the contractual provisions do not appear to be unreasonable, we shall accept the agreement, without suspension or hearing, to become effective on the date service commences.

Utah characterizes its submittals for Provo as an initial rate. Utah, however, presently wheels power and energy for

[1] *See* Attachment for affected customers and rate schedule designations.

[2] 50 FR 20629 (1985).

Provo's entitlement in Hunter Unit No. 1 under Rate Schedule FERC No. 125. Utah's submittal therefore represents the provision of additional services to Provo, and, thus, a change in rate subject to the Commission's suspension and refund authority under the Federal Power Act.

With respect to the two agreements applicable to Provo, our preliminary review of Utah's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Utah's rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our preliminary examination indicates that Utah's rates for service to Provo may produce substantially excessive revenues. In ordinary circumstances, we would suspend Utah's rates for the maximum statutory period. However, we note that Provo desires service to commence as soon as possible. We believe therefore that a nominal suspension period is appropriate. Further, in light of the affected customer's request, we find that good cause exists to waive the notice requirements. Accordingly, we shall suspend Utah's rates for service to Provo, to become effective upon the commencement of service, subject to refund.

We find that common questions of law and fact may be presented in Docket No. ER84-571-001. As a result, we shall consolidate this docket with No. ER84-571-001 for purposes of hearing and decision. Because the relief sought by Provo in Docket No. EL85-28-000 was to direct Utah to file the agreements submitted in Docket No. ER85-486-000, the former docket has become moot. We shall therefore terminate Docket No. EL85-28-000.

The Commission orders:

(A) Utah's request for waiver of the notice requirements is hereby granted.

(B) Utah's proposed Interconnection Agreement with Mother Earth is hereby accepted for filing, to become effective, without suspension or hearing, on the date service under the agreement commences.

(C) Utah's rates for service to Provo are hereby accepted for filing and suspended, to become effective on the date service under the agreements commences, subject to refund.

(D) Utah shall advise the Commission within fifteen (15) days of the date service commences under the agreements with Mother Earth and Provo.

(E) Pursuant to authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a)— of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Utah's rates for service to Provo.

(F) Docket Nos. ER85-486-000 and EL85-28-000 are hereby terminated. The evidentiary proceedings ordered herein shall be assigned Docket No. ER85-486-001.

(G) Docket Nos. ER85-486-001 and ER84-571-001 are hereby consolidated for purposes of hearing and decision.

(H) The administrative law judge designated to preside in Docket No. ER84-571-001 shall determine procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

ATTACHMENT—UTAH POWER & LIGHT COMPANY, DOCKET NO. ER85-486-000

[Rate Schedule Designation]

Designation	Other party	Description
(1) Rate Schedule FERC No. 134	Mother Earth Industries, Inc	Interconnection Agreement.
(2) Supplement No. 1 to Rate Schedule FERC No. 134	do	Exhibits A-E.
(3) Rate Schedule FERC No. 135	City of Provo, Utah	Interconnected Operation Agreement.
(4) Supplement No. 1 to Rate Schedule FERC No. 135	do	Exhibit A.
(5) Supplement No. 2 to Rate Schedule FERC No. 135	do	Service Schedule RS-RP, Emergency Capacity.
(6) Rate Schedule FERC No. 136	do	Transmission Service Agreement.
(7) Supplement No. 1 to Rate Schedule FERC No. 136	do	Attachment C, pl Stated Monthly Rate.

[FR Doc. 85-16062 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF85-2011-000 and EF85-2021-000]

United States Department of Energy—Bonneville Power Administration; Order Granting Interim Approval of Rates, Granting Interventions, Denying Motions To Reject, and Denying Motion for Partial Summary Disposition

Issued June 28 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgians Sheldon, A.G. Sousa and Charles G. Stalon.

On May 1, 1985, the Bonneville Power Administration (BPA) filed proposed wholesale power and transmission rates in Docket Nos. EF85-2011-000 and EF85-2021-000 respectively. BPA requests interim approval of these rates as of July 1, 1985, pursuant to section 7(i)(6) of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), 16 U.S.C. 839e(i)(6), and the Commission's Rules for the Confirmation and Approval of the Rates of the Bonneveille Power Administration, 18 CFR Part 300. In addition, BPA reqeusts final confirmation and approval of these rates pursuant to section 7(a)(2) of the Regional Act, 16 U.S.C. 839e(a)(2), for the period July 1, 1985, through June 30, 1990.

BPA also requests extension of the Commission's approval of the Hanford Contract Rate Formula and the ET-2, UFT-2, FPT-83.3, TGT-1 and UFT-83 transmission rates. BPA states that the Hanford rate and the RTGT-1 and UFT83 wheeling rate schedules are formula rates and asks approval for these rates through June 30, 1990. BPA seeks approval for the ET-2, UFT-2 and FPT-83.3 rate schedules through October 1, 1987, noting that these rates are referenced in existing agreements, and that they are not subject to ajdustment by BPA at present.

BPA asserts that the proposed rates would provide for an overall decrease in power revenues of approximately $50 million and an overall decrease in transmission revenues of approximately $21 million in comparison with revenues which would have been collected under current rates in Fiscal year 1987. Some of the proposed rates are higher than

rates currently in effect for the same service, while others are lower than rates currently in effect.

Notice of the filing was published in the **Federal Register** [1], with comments due on or before May 28, 1985. Seventeen separate timely pleadings were filed by individual petitioners or groups of petitioners.[2]

All petitioners have requested intervenor status in these proceedings. In the comments filed, a number of petitioners contend that BPA's proposed rates do not comply with the statutory standards set forth in the Regional Act. As a result, some of the petitioners have requested that the Commission disapprove BPA's proposed rate schedules.

Southern California Edison Company, San Diego Gas & Electric Company, Los Angeles Department of Water and Power, and the Cities of Glendale, Burbank and Pasadena, California (Southern California utilities) filed separate joint motions to intervene in Docket Nos. EF85-2011-000 and in EF85-2021-000. In their motion to intervene in Docket No. EF85-2011-000, the Southern California utilities urge that the Commission not grant interim approval to BPA's proposed rates applicable to the Southern California utilities. In particular, the Southern California utilities claim that BPA's nonfirm NF-85 rate is not cost-based, that the NF-85 rate will be discriminatory in effect, that it does not adequately define nonfirm energy and that the NF-85 rate schedule allows nonfirm energy to be sold under firm energy rate schedules. The Southern California utilities challenge BPA's SS-85 shared-the-savings rate schedule as contrary to applicable precedent and statutes and without record justification. The Southern California utilities also challenge BPA's SE-85 and SP-85 rate schedules as not properly cost-based and based on inadequately defined terms. The Southern California utilities contend that BPA should be required to file its Intertie Access Policies (dealing with the Pacific Northwest Intertie Line) before any approval, interim or otherwise, is given to BPA's proposed rates. Lastly, the Southern California utilities also ask for an opportunity to file further comments before the Commission grants final approval to any of BPA's proposed rates or before the Commission orders a hearing on BPH's 7(k) rates. In their motion to intervene in Docket No. EF85-2021-000, the Southern California utilities allege an interest in the outcome of the docket but do not raise specific issues.

Pacific Gas and Electric Company (PG&E) filed separate motions to intervene in the two BPA dockets. In its motion to intervene in docket No. EF85-2011-000, PG&E urges that the Commission reject BPA's proposed extraregional surplus and nonfirm rates because BPA is allegedly attempting to subsidize rates to customers in the Pacific Northwest from its sales to customes outside that region to the extent that the extraregional rates are in excess of actual costs for such service. PG&E also urges that BPA's proposed nonfirm and surplus firm rates be set for hearing pursuant to section 7(k) of the Regional Act.

The California Energy Commission (CEC) urges that the Commission deny interim approval of all of BPA's proposed rates and instead proceed directly to a full review of the proposed rates pursuant to sections 7(a)(2) and 7(k) of the Regional Act. The CEC asserts further that the Commission reject all of BPA's proposed rates because the review of BPA's rates for service in the Pacific Northwest is intertwined with the question of whether BPA's rates for service outside the Pacific Northwest are proper. The CEC also urges that interim approval of BPA's proposed rates for extraregional sales would seriously undermine the cost-effectiveness of a proposed new transmission line between the Pacific Northwest and California that, if completed, would have significant benefits for both regions. The CEC further urges that the Commission should deny interim approval of BPA's proposed shared-the-savings SS-85 rate even if the Commission decides to give interim approval to the proposed NF-85 rate. The CEC contends that BPA has failed to establish the SS-85 rate on a record basis as required by the Regional Act and that BPA has not provided answers to a number of questions as to how BPA will administer the SS-85 rate, also that interim approval is not justified. The CEC also alleges that BPA has failed to provide record basis for the inclusion of the costs of the residential exchange program in the costs on which the Standard rate of the NF-85 rate schedule is based. The CEC makes the same contention with respect to BPA's inclusion of costs of the Washington Public Power Supply System (WPPSS) in its nonfirm rates.

The Association of Public Agency Customers (APAC), made up of industrial customers of various of BPA's publicly-owned wholesale customers, filed motions to intervene in Docket Nos. EF85-2011-000 and EF85-2021-000. In its motion to intervene in Docket No. EF85-2011-000, APAC urges the Commission to deny interim approval of BPA's proposed wholesale power rates on the ground that these rates do not comply with the requirements of the Regional Act. In an accompanying motion APAC asks the Commission to deny interim approval of the wholesale power rates or, in the alternative, to disapprove summarily BPA's proposed wholesale firm power rates. APAC bases its requests on various alleged defects in BPA's development of its wholesale firm power rates, including use of 1939 water conditions in computing the amount of the revenue credit from nonfirm sales. APAC contends that BPA's use of these historically low water conditions in computing the revenue credit to the firm energy costs from nonfirm sales is contrary to the provisions of the Regional Act, and that the firm wholesale rates are therefore *per se* unlawful

APAC, in its motion to intervene in Docket No. EF85-2021-000, alleges an interest in the outcome of the proceeding and urges generally that BPA's transmission rates should be set at a level that will recover the costs incurred by BPA in providing transmission service, so that no cross-subsidization may occur.

The Association of Northwest Gas Utilities (ANGU) moved to intervene in Docket No. EF85-2011-000. ANGU urges that BPA's proposed nonfirm rates, particularly the NF-85 and SS-85 rates, are not high enough to meet the statutory standards governing approval of BPA's rates and that the nonfirm rates, other than the NF-85 Standard Rate, will result in unjust discrimination, predatory pricing, and violation of federal antitrust policies.

BPA's Direct Service Industrial customers (DSIs) filed motions to intervene in Docket Nos. EF85-2011-000 and EF85-2021-000. In their motion in EF85-2011-000, the DSIs generally allege that although the proposed rates are in some cases excessive, the fact that some of the proposed rates represent decreases from rates presently in effect, and the fact that the proposed rates will be subject to refund if put into effect on an interim basis, justify putting the proposed rates into effect on an interim basis. The DSIs urge that a further reasonable opportunity to comment on the proposed rates be given before the Commission addresses the question of granting final approval to the proposed rates. The DSIs' motion to intervene in Docket No. EF85-2021-000 alleges an

[1] 50 *FR* 19443 (1985).

[2] See Attachment A for a complete list of intervenors.

interest in the question of BPA's transmission rates and the allocation of BPA's transmission costs. The Hanna Nickel Smelting Company, a DSI customer, filed a separate motion to intervene in Docket No. EF85–2011–000 in which it alleges an interest in the outcome of the proceeding but does not raise any specific issues with regard to BPA's proposed rates.

Idaho Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, Utah Power & Light Company, and Washington Water Power Company all filed motions to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000, generally alleging that the BPA Administrator's decision justifying BPA's proposed rates contains substantive and procedural errors, that BPA's rates in both dockets are erroneously developed, and that they are not cost-justified. Pacific Power & Light Company also alleges that BPA's proposed rates impose rate schedule provisions not authorized by contract.

The Public Generating Pool, made up of Pacific Northwest municipal electric utilities with their own generating capacity, filed a motion to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000 in which it alleges that BPA's nonfirm rates should be developed on a share-the-savings basis and that BPA's rates were erroneously developed. The Public Power Council, made up of various BPA publicly and cooperatively-owned customers, filed a motion to intervene in Docket No. EF85–2011–000 in which it alleges an interest in the outcome of the proceeding but does not raise any specific issues. The Western Public Agencies Group, made up of publicly-owned utilities in Washington and Oregon that depend primarily upon BPA for electric service, moved to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000, alleging an interest in the outcome of the proceedings but not raising any specific substantive issues.

BPA filed a response to the arguments in the motions to intervene of CEC and the Southern California utilities that BPA's proposed rates should be denied interim approval. BPA states that the Commission need not hold a hearing on the proposed rates under section 7(k) of the Regional Act before granting interim approval to them. BPA cites a previous Commission order [3] and the availability of refunds in support of putting the proposed rates into immediate effect on an interim basis. BPA also cites the provisions of the Regional Act as imposing specific ratemaking guidelines on BPA as of July 1, 1985, and thus requiring interim approval of BPA's proposed rates as of that date. BPA also contends that the Southern California utilities' criticisms of the SP–85 and SE–85 rates are addressed to rate design issues and thus beyond the scope of the Commission's review of BPA's firm rates. BPA also cites a prior Commission order [4] in support of the proposition that no reason has been shown to believe that BPA will in fact sell nonfirm energy under a firm energy rate schedule, with the result that there has been no basis shown to make firm energy rate schedules the subject of section 7(k) proceeding. BPA also alleges that it has provided sufficiently specific implementation criteria for the SP–85 and SE–85 rate schedules, that challenges to BPA implementation of its rates are outside the jurisdiction of the Commission, that its proposed nonfirm energy rates do not undermine the cost-effectiveness of the proposed Northwest-California transmission line, that its shared-savings SS–85 rate is supported by the record, and that its NF–85 rate schedule is specifically designed to recover the costs of producing nonfirm energy. In particular, BPA asserts, the NF–85 costs properly include the costs of the residential exchange program and BPA's cost for the WPPSS projects. BPA also asserts that its NF–85 nonfirm energy rate schedule is not discriminatory. With respect to intertie Access Policy, BPA contends that its development is not a ratemaking action, that it is therefore not subject to Commission review, that the policy is the subject of a pending declaratory order docket, Docket No. EL85–6–000, and that the policy has recently been affirmed on judicial review.[5]

In response to the ANGU motion to intervene, BPA asserts that its proposed rates are sufficient to ensure repayment of federal investments and that they do not result in unjust discrimination, predatory pricing or violations of the antitrust laws. In response to APAC's contentions regarding BPA's use of 1939 water levels in developing its costs and sales, BPA contends that it was necessary to use the assumption of 1939 water conditions in order to provide a sufficient protection against rates so low as not to recover BPA's costs and, hence, in violation of the requirement that BPA's rates be consistent with sound business principles.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make the movants parties to this proceeding.[6]

As noted above, BPA has requested approval of these rates on a final basis as of July 1, 1985. In the alternative, BPA seeks interim approval as of that date.

Due to the complexities of the filing, we are unable to make a determination at this time with respect to BPA's request for final approval. Therefore, our current review will be limited to consideration on an interim basis which, necessarily, is a more limited review process than the review of rates for confirmation and approval on a final basis.

The Commission's regulations, in Part 300, set forth the standards to be used in considering appropriate action with respect to a request by the Administrator for interim approval of rates. Our initial review suggests that the wholesale power and transmission rate schedules proposed in the filing are developed at a level which, assuming accurate cost and revenue estimates and provided that all amortization payments are made on a timely basis, would produce the needed revenues to allow BPA to meet its financial obligations. Thus, on its face, BPA's system power and transmission rates appear to comply with the applicable provisions of the Regional Act. This observation, of course, is based upon the limited analysis possible without the benefit of more comprehensive public comments and an in-depth Commission analysis. We shall deny at this time the requests for summary rejection of various BPA rates. We are not persuaded by the information provided that the later availability of refunds will constitute an inadequate remedy for the concerns raised. These findings, however, are without prejudice to our further consideration of the issues raised in the pleadings and, if appropriate, disapproval of BPA's rates at a later date. A more detailed review of BPA's proposed rates will be conducted for purposes of determining whether the rates should be confirmed and approved on a final basis. We shall grant BPA's request for approval of the proposed wholesale power and transmission rates

[3] U.S. Dep't of Energy—Bonneville Power Admin., 20 FERC ¶ 61,389 at 61,294 (1982).

[4] U.S. Dep't of Energy Bonneville Power Admin., 23 FERC ¶ 61,161 at 61,354 (1983).

[5] *Department of Water and Power of the City of Los Angeles* v. *BPA*, No. 84–7618 (9th Cir., April 24, 1985).

[6] We find good cause to grant the motion of the Western Public Agencies Group to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000, given that it was filed only one day out-of-time.

on an interim basis until the Commission acts to approve or disapprove the rates on a final basis.

In light of the limited time in which parties were permitted to file comments on BPA's filing, we shall allow additional periods during which parties may comment and respond to initial comments on any and all issues related to final confirmation and approval of BPA's rates. In particular, the parties are invited to comment on the need for a section 7(k) hearing before this Commission.

The Commission orders:

(A) The untimely motion to intervene of the Western Public Agencies Group is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The motions to reject BPA's proposed rates or to deny interim approval or, in the alternative, to disapprove summarily of certain BPA proposed rates are hereby denied without prejudice.

(C) BPA's proposed wholesale power and transmission rates are hereby permitted to be placed into effect on an interim basis, subject to refund with interest as set forth in Part 300 of the Commission's regulations, pending final confirmation and approval, or disapproval, of BPA's proposed wholesale power and transmission rates and charges.

(D) Within thirty (30) days of the date of this order, all parties who wish to do so shall file additional comments regarding final confirmation and approval of BPA's proposed rates. The parties should specifically delineate in their comments any and all issues that they feel should be set for hearing under section 7(k) of the Regional Act, in light of the Commission's interpretation of the Regional Act set forth in its September 1, 1982 order resolving the scope of the Commission's jurisdiction (20 FERC ¶ 61,292). Parties may file comments in response to initial comments within thirty (30) days after the date on which initial comments are due. All timely initial and responsive comments will be considered by the Commission in determining the ultimate disposition of BPA's proposed rates.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-16061 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a $5,148.33 consent order fund to members of the public. This money is being held in escrow following the settlement of any enforcement proceeding involving City Service, Inc. of Kalispell, Montana (Case No. HEF-0050).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to City Service, Inc. Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. All comments should conspicuously display a reference to Case No. HEF-0050.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by City Service, Inc. of Kalispell, Montana and the DOE which settled possible regulatory violations in the firms's sales of motor gasoline during the consent order period, October 1, 1979 through December 31, 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by City Service pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of City Service motor gasoline during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E-234 1000 Independence Avenue, SW, Washington, D.C. 20585.

Dated: June 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 25, 1985.

Name of Firm: City Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0050.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who were injured by alleged or adjudicated overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982), *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with City Service, Inc. (City Service) of Kalispell, Montana. City Service is a reseller-retailer who sells motor gasoline in the state of Montana. The firm was therefore subject to the DOE price regulations set forth in 10 CFR 212.93. An ERA audit of City Service's operations during the period October 1, 1979 through December 31, 1979 revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between City Service and the DOE regarding the firm's compliance with the DOE price regulations in sales of motor gasoline during the audit period, the firm

entered into a consent order with the DOE on July 9, 1980. The consent order covers City Service's sales of motor gasoline during the three-month audit period (hereinafter the consent order period). In executing the consent order, City Service agreed to refund $1,892.17 directly to its retail customers and to remit $5,148.33 to the DOE in settlement of its potential liability for alleged pricing violations in transactions with its wholesale customers. *See* Consent Order ¶¶ 6 and 7. This Proposed Decision and Order concerns the distribution of the $5,148.33 that the firm remitted to the DOE, plus the interest which has accrued on that money.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who were injured by alleged or adjudicated violations, or is unable to ascertain the amounts of such persons' injuries. After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the City Service consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

City Service has identified its wholesale customers who purchased motor gasoline from the firm during the consent order period and thus may have been injured by City Service's alleged pricing practices. These customers are listed in the Appendix to this Proposed Decision and Order. We believe that these were the parties who were most likely injured by City Service's pricing practices that were alleged to be in violation of the price regulations. These firms are resellers (wholesalers and retailers) of the motor gasoline purchased from City Service. In prior refund proceedings, we have generally required resellers of a consent order firm's products to demonstrate that during the consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased the product from the consent order firm, market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, the reseller is generally required to show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank does not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we propose to adopt certain presumptions. First, we will adopt a presumption that the effects of the alleged price violations were dispersed equally in all sales of motor gasoline sold by City Service during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we propose to adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit reseller claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata or volumetric refund presumption assumes that the alleged overcharges were spread equally over all gallons of motor gasoline marketed by City Service to its wholesale customers. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. A volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of products sold by the consent order firm during the consent order period. In the present case, the volumetric refund amount is $0.011727 per gallon, exclusive of interest ($5,148.33 consent order fund divided by 439,000 gallons of motor gasoline sold at wholesale during the consent order period).[1]

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the City Service consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in prior refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of the small claims presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants purchased motor gasoline from City Service and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption we propose to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[2]

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[1] However, we recognize that the impact on an individual purchaser could have been greater than this volumetric refund amount, and we propose that any purchaser be allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the amount determined using the volumetric presumption. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,074 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co., and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984) and cases cited therein.

[2] We propose that resellers who made only spot purchases from City Service be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Continued

Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a theshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the maximum refund amount for any one claimant will be fairly low, and the time period of the consent order was distant, we find that the establishment of a presumption of injury for all claims of $5,000 is reasonable. *See Texas Oil & Gas Corp.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

IV. Distribution of Consent Order Funds

Although the ERA audit files do not identify all of City Service's customers or the amount of money they should receive in a Subpart V proceeding, City Service has recently provided the OHA with the addresses of its wholesale customers during the consent order period as well as the approximate gallons of City Service motor gasoline purchased by each of those customers. Since this information appears accurate and complete and the ERA audit files do not identify any other wholesale customers of City Service, we believe it is appropriate to use this information to determine eligibility for refunds in this proceeding. Accordingly, we propose to limit eligibility for refunds in this proceeding to those firms identified by City Service and listed in the Appendix to this Proposed Decision. We also propose to use the designated volumes in calculating refunds. *Cf. Marion Corp.*, 12 DOE ¶ 85,014 (1984) (refunds to customers identified in NOPV). We specifically solicit comments on the accuracy of the volumes stated in the Appendix, as well as comments regarding our proposal to use these amounts. We note that in the event we elect to use the volumes listed in the Appendix, we propose to require the claimants to certify the accuracy of their volumes.

Refund applications in this proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process in the Federal Register and to notify the firms listed in the Appendix of this proceeding. In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by City Service, Inc. pursuant to the consent order executed on July 9, 1980, will be distributed in accordance with the foregoing decision.

APPENDIX.—WHOLESALE CUSTOMERS OF CITY SERVICE, INC.: HEF-0050

Customer	Approximate volumes
Robert Berry, Main & 4th Street, Kalispell, MT 59901	50,000
Lloyd Mangnall, 437 Electric Avenue, Bigfork, MT 59902	50,000
Myrtle Smith, Neighborhood Store, Creston, MT 59902	12,000
Ron Millard, P.O. Box 436, Whitefish, MT 59937	80,000
Orval Clarke, Main & Center Street, Kalispell, MT 59901	96,000
Slim Hoylman, 425 W. Utah, Kalispell, MT 59901	75,000
Richard Lawrence, Somers, MT 59932	15,000
Lakeside Mercantile, Lakeside, MT 59922	15,000
Lynn Hadley, Marion, MT	6,000
Jim Brown, Plains, MT 59859	40,000

[FR Doc. 85-16013 Filed 7-3-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $113,853 in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Pasco Petroleum Company, Inc. a reseller-retailer of petroleum products, located in Phoenix, Arizona.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0146.

FOR FURTHER INFORMATION CONTACT: Angela Foster, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Pasco Petroleum Company, Inc. (Pasco). The Pasco consent order settled alleged pricing violations in the firm's sales of motor gasoline to customers during the period November 1, 1973 through April 30, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Pasco pursuant to the consent order. In this case, the DOE has tentatively decided that the consent order funds should be distributed in two stages. In the first stage, OHA proposes that a portion of the consent order fund should be distributed to seven first purchasers after each has filed an application for refund. The purchasers were identified by a DOE audit and were allotted funds based on presumptions of injury which the DOE has utilized in past proceedings. However, applications for refund will also be accepted from purchasers not identified by the DOE audit. In the event that money remains in the Pasco escrow account after all first-stage claims have been disposed of, the DOE will determine an alternative plan for distributing these funds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the

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Vickers, 8 DOE at 85,396-97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise discretion as to where and when it made the purchase(s) on which its refund claim is based.

proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 24, 1985.

Name of Firm: Pasco Petroleum Co., Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0146.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to readily identify those persons who likely were injured by alleged overcharges or to readily ascertain the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1982), *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with the consent order which it entered with Pasco Petroleum Co., Inc. (Pasco). Pasco is a "reseller" of "covered products" as those terms were defined in 10 CFR 212.31, and is located in Phoenix, Arizona. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price Regulations with respect to sales of motor gasoline during the period November 1, 1973 through April 30, 1974 (audit period). In order to settle all claims and disputes between Pasco and the DOE regarding the firm's sales of motor gasoline during the audit period, Pasco and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Pasco does not admit that it committed any such violations. Finally, according to the Pasco consent order, the alleged overcharges affected two classes of customers, and Pasco agreed to place $ 113,853, which includes interest to date of deposit, in an escrow account for DOE to distribute to these two groups of purchasers. Of the funds which Pasco placed in the escrow account, $3,638 represents sales made to the firm's wholesale customers, and $110,215 represents sales made to its retail customers through company-owned stations. The consent order funds were paid in full on August 27, 1981. This Decision concerns the distribution of the consent order funds that were deposited in the Pasco escrow account, plus accrued interest to date.

II. Proposed Refund Procedures

The purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. 10 CFR Part 205, Subpart V. In order to effect restitution in this proceeding, we have determined to rely in part on the information contained in the ERA audit files. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.,* 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a more precise determination with respect to the identity of the allegedly overcharged parties is possible.

A. Refunds to Identified Purchasers

During the DOE's audit of Pasco, seven wholesale purchasers were identified by ERA as having allegedly been overcharged. We know that the DOE audit files do not necessarily provide conclusive evidence as to the identity of all possible refund recipients or the refund that may be appropriate. However, the information contained in the audit files may reasonably be used for guidance. *See Armstrong & Associates/City of San Antonio,* 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion,* we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned either among the customers identified by the audit, or to their downstream purchasers. *See, e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Brown Oil Co.,* 12 DOE ¶ 85,028 (1984); *and Reinhard Distributors, Inc.,* 12 DOE ¶ 85,137 (1984). The first purchasers identified by the audits, along with the respective shares of the settlement amount allotted to each by ERA, are listed in the Appendix to this decision.

Identification of first purchasers is only the initial step in the distribution process. We must also determine whether these first purchasers were actually injured, or whether any or part of the alleged overcharges were passed on. In addition to the information in the record at this time, we propose to adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow accounts in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit claimants to participate in the refund process without disproportionate expense, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in this case we propose to adopt a presumption of injury with respect to small claims.

There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure certainly can be time-consuming and expensive. In the case of small claims, the cost to the firm

of gathering this factual information, and the cost to OHA of analyzing it, may exceed the expected refund amount. Failure to adopt simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Pasco and were in the chain of distribution where the alleged overcharges occurred. Therefore, they were affected by the alleged overcharges, at least, initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the small claim presumption which we propose to adopt, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Other refund decisions have expressed the threshold either in terms of purchase volumes or dollar amounts. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not to exceed the amount of the refund to be gained. In this case, where the consent order fund is small, the refund amount is fairly low, and the time period of the consent order, is many years past, establishing a threshold of $5,000 would be reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. After analysis of the information in the record, it appears that all of Pasco's customers listed on Appendix A made small purchases of the firm's products.

On the basis of the considerations discussed above, we propose to distribute a portion of the escrow funds to the wholesale purchasers listed in Appendix A in the amounts specified, plus accrued interest to date. The share of the escrow fund which the listed purchasers in Appendix A may may receive represents 30% of the amount each was allegedly overcharged, and is consistent with the terms of the Pasco consent order, which settled for 30% of the total amount of alleged overcharges identified by the audit. In order to actually receive a refund each customer will still be required to file an application for refund. (*See* discussion *infra*).

B. Refunds To Other Purchasers

As discussed above, this Decision concerns the distribution of $113,853.00 that Pasco deposited into the escrow account, plus accrued interest to date. Since the refunds tentatively allotted to identified wholesale purchasers total only $3,638, the remaining portion of the Pasco consent order funds may be distributed among purchasers other than those identified by the ERA audit, and repurchasers, who may have been injured by the alleged overcharges. To assist other potential claimants in deciding whether to apply for a refund, we propose to utilize the small claim presumption discussed above and, in addition, to adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Pasco during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

Using a volumetric approach in this proceeding means that a portion of the Pasco consent order amount would be allocated to each gallon of product which a successful claimant purchased from Pasco. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.004093 per gallon.[1] Potential applicants that were not identified by the ERA audit of Pasco may use this volumetric figure to estimate the refund to which they may be entitled. Previous experience with Subpart V proceedings indicates that to the extent such other purchasers come forward as first-stage refund claimants, they would be either resellers (including retailers) or end-users. As we stated above, in order to qualify for a refund, resellers generally would be required to establish that they absorbed the alleged overcharges. However, those reseller claimants applying for a refund under $5,000 will not be required to demonstrate injury. *See* discussion, *supra.*

In addition to the presumptions we are adopting, we are making a finding that end-users of ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharge settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) and cases cited therein. We have concluded that end-users of Pasco petroleum products need only document their purchase volumes from Pasco to make a sufficient showing that they were injured by the alleged overcharges. If additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims.[2]

Finally, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the modest benefits of restitution in those situations. *See, e.g.,*

[1] This per gallon factor is computed by dividing the $113,853.00 available for distribution under the Pasco consent order by 27,813,597 gallons, which represents Pasco's total sales of all covered products during the consent order period.

[2] Purchasers identified in the ERA audit of Pasco as having allegedly been overcharged may also submit information to show that they are entitled to larger refunds than those indicated in Appendix A.

Uban, supra at 85,225. *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases of motor gasoline from Pasco, or to submit a statement verifying that it purchased motor gasoline from Pasco and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying the Pasco proceeding. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Pasco Petroleum Co., Inc. pursuant to the consent order executed on September 1, 1981, will be distributed in accordance with the foregoing decision.

APPENDIX A.—PASCO PETROLEUM COMPANY, INC.

First purchasers	Portion of settlement amount [1]
Quick Petroleum Company, 2922 W. Mariposa, Phoenix, Arizona 85017	$934
Brennan Petroleum Company, 202 E. Southern, Mesa, Arizona 85202	22
Gas-O-Tron, 6335 N. 7th Street, Phoenix, Arizona 85014	22

APPENDIX A.—PASCO PETROLEUM COMPANY, INC.—Continued

First purchasers	Portion of settlement amount [1]
Shepherd Bro's., 2724 W. Glenndale, Phoenix, Arizona 85021	22
Harry Jordan, Box 4, Wittmann, Arizona 85361	42
Whiting Bro's., 3301 N. Haydn, Scottsdale, Arizona 8523	23
Herb Eads, Box 41, Lake Havasu City, Arizona 86403	2,573

[1] Does not include interest. Actual refunds will include interest which has accrued on these amounts since DOE received the Pasco consent orders funds on August 27, 1981.

[FR Doc. 85-16014 Filed 7-3-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $34,966.99 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving GGC, Inc. of Hobbs, New Mexico (Case No. HEF-0076) and Goodman Oil Company of Boise, Idaho (Case No. HEF-0082).

DATE: AND ADDRESS: Comments must be filed within 30 days of publications of this notice in the **Federal Register** and should be addressed to either the GGC, Inc. or Goodman Oil Company Consent Order Proceeding Office, of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. All comments should conspicuously display a reference to the applicable case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to two consent orders entered into by the DOE and GGC, Inc. of Hobbs, New Mexico and Goodman Oil Company of Boise, Idaho, which settled possible regulatory violations in the firms' sales of motor gasoline during their respective consent order periods, September 1, 1979 through July 31, 1980 and July 25, 1979 through December 31, 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow accounts funded by GGC and Goodman pursuant to the consent orders. The DOE has tentatively established procedures under which purchasers of motor gasoline from the consent order firms during the consent order period may file claims for refunds. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of these comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 26, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 26, 1985.

Names of Firms: Zia Fuels (GGC Corp.) and Goodman Oil Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0076 and HEF-0082.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. See 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V, see

Office of Enforcement, 8 DOE ¶ 82,597 (1981). Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed Petitions for the Implementation of Special Refund Procedures in connection with two consent orders, entered into with Zia Fuels (GGC Corp.) (GGC) of Hobbs, New Mexico on November 2, 1980 [1] and Goodman Oil Company (Goodman) of Boise, Idaho on September 2, 1981.

I. Background

GGC and Goodman both sell motor gasoline to other motor gasoline marketers (resellers and retailers) and in bulk to commercial and farm accounts (end-users). GGC and Goodman were therefore reseller-retailers subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212.

DOE audits of the firms' operations revealed possible regulatory violations with respect to the firms' pricing of motor gasoline. In order to settle all claims and disputes concerning GGC and Goodman's compliance with the DOE price regulations in sales of motor gasoline during their respective consent order periods, the firms and the DOE executed consent orders whereby the firms agreed to remit the alleged overcharges to the DOE for later disbursement. The consent orders refer to the DOE's allegations of regulatory violations, but note that no findings of violation were made. Additionally, the consent orders state that the firms do not admit that they committed any such violations. The consent order amounts and periods are set forth below:

Firm	Escrow amount	Consent order period
GGC	[1] $25,420.99	Sept. 1 1979 to July 31, 1980.
Goodman	9,566.00	July 25, 1979 to Dec. 31, 1979.

[1] This amount represents the $23,748.00 consent order amount plus $1,672.99 interest which accrued prior to GGC's completion of its payments.

According to information in the ERA files regarding these firms, GGC sold motor gasoline in the states of New Mexico and Texas, and Goodman sold motor gasoline in the states of Idaho, Washington, and Oregon.[2] This Proposed Decision concerns the distribution of the funds that were deposited in the escrow accounts, plus accrued interest.

II. Jurisdiction

The Subpart V procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. After reviewing the records in this proceeding, we have concluded that it is difficult to identify potentially injured parties and to ascertain readily the extent to which such parties were injured by GGC and Goodman's alleged pricing practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The OHA therefore proposes to grant the ERA's petitions and accept jurisdiction over the funds received by the DOE pursuant to the GGC and Goodman consent orders.

III. Proposed Refund Procedures

We propose that the GGC and Goodman consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by the firms' alleged regulatory violations. We expect that claimants in the GGC and Goodman refund proceedings will fall into two general categories: (i) resellers and retailers (hereinafter collectively referred to as resellers) who resold either GGC or Goodman motor gasoline and (ii) individuals or firms that consumed either GGC or Goodman motor gasoline for their own use (end-users).

To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the motor gasoline purchased from GGC or Goodman at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased motor gasoline from the consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices.[3] *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982). The maintenance of banks will not, however, automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we propose to adopt certain presumptions. First, we will adopt a presumption that the effects of the alleged price violations were dispersed equally in all sales of motor gasoline sold by the consent order firm during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of motor gasoline marketed by the consent order firm. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. A volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of products sold by the consent order firm during the consent order period.

Based on the information available to us at this time in the Goodman proceeding, the volumetric refund amount is $0.0022858 per gallon, exclusive of interest ($9,566 consent order fund divided by 4,166,667 gallons, the estimated volume of motor gasoline sold by Goodman during the five-month consent order period). In the GGC proceeding, the volumetric refund amount is $0.012378 per gallon, exclusive of interest ($25,420.99 consent order fund divided by 2,053,726 gallons of motor

[1] In its audit of Zia Fuels, the ERA found that the firm and another entity, Morris Oil Company, were controlled by Garland Morris of GGC, Inc. and that the two firms engaged in intercompany sales of motor gasoline. As a result, the ERA concluded that both firms should be audited under the single firm concept. See 10 CFR 212.31 (definition of "firm.") Accordingly, the GGC consent order covers both Morris Oil Company and Zia Fuels' operations during the consent order period.

[2] At the time of the DOE audit, in addition to reselling gasoline to wholesale customers, Goodman operated three retail service stations in Payette, Weiser, and Grandview, Idaho. Sales from those retail outlets are not covered by the consent order, which mentions only sales from Goodman's bulk plants.

[3] In the present cases, the consent order periods are subsequent to the amendment to the price rule which eliminated the banking requirement for retailers effective July 15, 1979. 44 FR 42541 (July 19, 1979). Therefore, retailer applicants will not be required to submit bank information.

gasoline sold during the consent order period.)[4]

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practives settled in either consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to substantiate such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund.

Under the small claims presumption we are proposing to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level.[5] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85.069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the case of the GGC and Goodman refund proceedings where the time period of the consent order is distant and, particularly in the case of Goodman, the volumetric refund amount is small, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[6] *See Texas Oil & Gas Corp.; Marion Corp.*, 12 DOE ¶ 85,014 (1985).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We therefore propose that end-users of GGC or Goodman motor gasoline need only document their purchase volumes from the consent order firm to make a sufficient showing that they were injured by the alleged overcharges.

As in previous cases, we propose to establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban*, 9 DOE at 85, 225.

Refund applications in the GGC and Goodman proceedings should not be filed until after issuance of a final Decision and Order. Detailed procedues for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. We have contacted the consent order firms for assistance in identifying the potential claimants. While GGC and Goodman have provided us with some information concerning their business operations, we do not yet have a complete list of their respective customers.[7] We may also place notices of these refund proceedings in local newspapers in GGC and Goodman's marketing areas.

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be disbursed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is Therefore ordered that:

(1) The refund amount remitted to the Department of Energy by GGC, Inc. d/b/a Zia Fuels and Morris Oil Company pursuant to the consent order executed on November 2, 1980, will be distributed in accordance with the foregoing decision.

(2) The refund amount remitted to the Department of Energy by Goodman Oil Company pursuant to the consent order executed on September 2, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-16015 Filed 7-3-85; 8:45 am]

BILLING CODE 6450-01-M

[4] We recognize that the impact on an individual purchaser could have been greater than the applicable volumetric refund amount, and we propose that any purchaser be allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the amount determined using the volumetric presumption. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233-34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶85,054 at 88,164 (1984) and cases cited therein.

[5] If a reseller made only spot purchases from the consent order firm, however, we propose that, absent evidence to the contrary, it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make spot purchases and would therefore not have made spot purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 at 85,396-97 (1981). We believe that the same rationale holds true in the present case. Accordingly, in addition to demonstrating injury, a spot purchaser which files a claim should submit evidence to establish that it is inappropriate to presume that the firm had discretion as to where and when it made the purchase(s) on which its refund claim is based.

[6] As in prior refund cases, resellers whose refund calculated according to the volumetric factor exceeds the threshold amount may elect to apply for a refund based on the threshold amount without being required to demonstrate injury. In view of the small amount of money in the Goodman consent order fund, we believe that it is likely all Goodman claimants will fall below the $5,000 threshold and thus will not be required to make a detailed showing of injury.

[7] GGC has provided this Office with the addresses of Zia Fuels' customers during the consent order period. At this date, we do not have any information concerning Morris Oil Company's customers.

Objections to Proposed Remedial Orders Filed Week of May 27 Through May 31, 1985

During the week of May 27 through May 31, 1985, the notices of objection to proposed remedial orders listed in the

Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay.

Director, Office of Hearings and Appeals.

June 24, 1985.

Petroleum Supply, Inc., and Don Ragland, Houston, Texas: HRO-0293 crude oil

On May 28, 1985, Petroleum Supply, Inc. and Don Ragland (PSI), 8705 Katy Freeway, Houston, Texas, filed a Notice of Objections to an Amended Proposed Remedial Order (APRO) which the Dallas Office of the Economic Regulatory Administration (ERA) issued to PSI on March 26, 1985. In the APRO, the ERA found that during May 1977 through December 1977 PSI charged prices in excess of its maximum lawful selling price in violation of 10 CFR 212.10 and 210.93, and engaged in conduct that (1) circumvented or contravened or resulted in the circumvention or contravention of applicable regulations in violation of 10 CFR 205.202, and (2) enabled the firm to obtain a higher price for crude oil than permitted by the regulations in violations of 10 CFR 210.62(c). The APRO also alleges that PSI violated 10 CFR 212.186, 210.62(c) and 205.202 during January through June 1978 by charging prices in excess of the firm's actual purchase prices without performing any functions traditionally and historically associated with resale of crude oil. According to the APRO, the violations resulted in overcharges of $335,169.58

Rodgers Hydrocarbon Corporation, Wichita Falls, Texas: HRO-0294 crude oil

On May 28, 1985, the State of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711 filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas Office of the Economic Regulatory Administration issued to Rodgers Hydrocarbon Corporation on April 26, 1985. In the PRO, the Dallas Office found that during the period September 1977 through January 1980, Rodgers Hydrocarbon Corporation resold uncertified and improperly certified crude oil in violation of the certification provisions of 10 CFR Part 212. According to the PRO, the violation resulted in $2,782,495.73 of overcharges.

[FR Doc. 85-16012 Filed 7-3-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of May 27 Through May 31, 1985

During the week of May 27 through May 31, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 24, 1985.

Bale Oil Company, Horse Cave, Kentucky: HEE-0140 reporting requirements

Bale Oil Company filed an Application for Exception from the provisions of the Form EIA-782B reporting requirement. The exception request, if granted, would relieve Bale Oil Company of its monthly reporting obligation. On May 28, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Budny Fuel Oil Company, Trenton, New Jersey: HEE-0135 reporting requirements

Budny Fuel Oil Company filed an Application for Exception from the Form EIA-821 reporting requirement. The exception request, if granted, would prospectively relieve the firm of the obligation to file this annual report. On May 28, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Ed Joyce Fuel & Feeds, Geraldine, Montana: HEE-0143 reporting requirements

Ed Joyce Fuel & Feeds filed an Application for Exception from the provisions of the Form EIA-782B reporting requirement. The exception request, if granted, would relieve Ed Joyce Fuel & Feeds of its monthly reporting obligation. On May 28, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be granted.

[FR Doc. 85-16016 Filed 7-3-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL #2716-1; OPTS-91001]

4,4'-Methylenedianiline; Decision To Report to the Occupational Safety and Health Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has reasonable basis to conclude that the manufacture and use of 4,4'-methylenedianiline (4,4'-MDA) present an unreasonable risk of injury to the health of exposed workers. EPA has further determined that this risk may be prevented or reduced to a sufficient extent by action taken by the Occupational Safety and Health Administration (OSHA) under the Occupational Safety and Health Act (OSHAct). EPA is submitting to OSHA a report under sec. 9(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2608(a), that describes the risks of 4,4'-MDA and requests that OSHA respond to EPA within 180 days of the publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW, Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.:

(554–1404). Outside U.S.A.: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

4,4'-Methylenedianiline (4,4'-MDA) is a chemical produced at a rate of approximately 400 million pounds per year and used primarily (approximately 98 percent) to manufacture methylenediphenyl diisocyanate (MDI). MDI is used to make polyurethane foams and elastomers. The remainder of the 4,4'-MDA produced is used to make products such as epoxy resins, wire coatings, and dyes. Exposure can occur from either dermal or respiratory contact with the chemical. There are approximately 600 workers exposed to 4,4'-MDA during the manufacture of 4,4'-MDA and its conversion to MDI, and several thousand workers are potentially exposed in the non-MDI uses. No evidence exists of significant non-occupational exposure to 4,4'-MDA.

The EPA published in the **Federal Register** of April 27, 1983 (48 FR 19078) its determination, under sec. 4(f) of TSCA, 15 U.S.C. 2603(f), that there may be a reasonable basis to conclude that 4,4'-MDA presents a significant risk of serious harm to humans from cancer. This is known as the 4(f) threshold determination. Under sec. 4(f), EPA has 180 days from receipt of the information that led to the threshold determination to "initiate appropriate action" to prevent or reduce the risk from the chemical of concern or to announce that the risk is not unreasonable.

The sec. 4(f) threshold determination notice for 4,4'-MDA was based primarily on a draft report of a study undertaken by the National Toxicology Program (Ref. 10). The study demonstrated that the dihydrochloride salt of 4,4'-MDA is carcinogenic in both sexes of rats and mice at two oral dose levels, and thus provides a basis to conclude that 4,4'-MDA presents a risk of cancer in exposed humans. That study plus: (1) A lack of any mandatory workplace standard; (2) the apparent inadequacy of the voluntary workplace standard set by the American Conference of Governmental Industrial Hygienists (ACGIH) of 0.1 parts per million (ppm) or 0.81 milligrams per cubic meter (mg/m^3) [1], (3) evidence that some manufacturers and processors may be exceeding even the ACGIH limit; and (4) the fact that several thousand workers may be exposed, formed the basis for the sec. 4(f) threshold determination.

[1] At an exposure level of 0.1 ppm, the added risk of cancer from inhalation of 4,4'-MDA was estimated to be as high as 4×10^{-3}.

Within the designated 180-day statutory time frame, EPA "initiate[d] appropriate action." The initiation consisted of the issuance of an Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** of September 20, 1983 (48 FR 42898). The ANPR announced the joint effort by the EPA and the OSHA to initiate regulatory action to determine and implement the most effective means of controlling exposures to 4,4'-MDA. An announced intention of the ANPR was to determine which agency's statute provided a better basis for regulation. The ANPR invited views and data from interested parties in four major areas.

First, the Agency requested detailed information on the operations used to manufacture and process 4,4'-MDA, the potential for exposure at each stage, including air and work surface monitoring data, and descriptions of workplace practices. Second, EPA requested detailed descriptions of the non-MDI uses of 4,4'-MDA and updated information on the identity of processors and users. Third, the Agency requested information on the availability, costs, technical and economic suitability, and toxicity of substitutes for 4,4'-MDA. Finally, EPA invited comments and information on methods of controlling exposure. In response to the ANPR, comments from six parties were received.

Five sets of comments were from industry sources. Information was submitted on uses, exposure, control methods, substitute products, and other relevant areas. The comments raised two major issues: (1) That the hypothetical exposure levels underlying EPA's quantitative risk assessment used to support the sec. 4(f) threshold determination were erroneously high; and (2) that the problem, being primarily a workplace problem, should be regulated by OSHA. The sixth comment was from the Natural Resources Defense Council which urged adoption of a regulatory strategy that induced industry to develop control methods based on exposure avoidance, with the employer bearing the burden of protection rather than the worker.

Following the issuance of the ANPR, the Agency continued its regulatory investigation by conducting assessments of exposure in the non-MDI use segments, risk control methods and costs, and the availability of substitutes for 4,4'-MDA or its products. EPA considered various regulatory options, including prohibiting the use of 4,4'-MDA in some or all uses and imposing various forms of exposure controls in the workplace. As a result of the information submitted in response to the ANPR and other information developed by EPA, the Agency has determined that a workplace standard may prevent or reduce risks to a sufficient extent, and appears technically and economically feasible.

Based on the entire record developed during EPA's regulatory investigation, the Agency has reasonable basis to conclude that the unregulated manufacture and use of 4,4'–MDA present an unreasonable risk of injury to human health, and has determined that the risk may be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act (OSHAct). Therefore, pursuant to sec. 9(a) of TSCA, the Agency is issuing this report and is requesting OSHA to determine if the risks described in the report may be prevented or reduced to a sufficient extent by action taken under the OHSAct and, if so, to issue an order declaring whether the activities described in the report present the risk described. A response from OSHA to the Administrator of EPA is requested within 180 days of publication of this report in the **Federal Register.** EPA believes that is sufficient time for OSHA to evaluate the scientific matters and policy requirements. In particular, OSHA will have to evaluate the data relating to significant risk and evaluate the technical and economic feasibility of control options in affected industries.

II. Legal Authorities

TSCA provides EPA with broad authority to assess and regulate chemical substances in the environment, in the workplace, and in commercial products. Under sec. 6(a) of TSCA, EPA is authorized to impose regulatory controls if the Agency finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance presents or will present an unreasonable risk of injury to human health or the environment. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur from the chemical substance under consideration against the social and economic costs to society of placing restrictions on the chemical. Specifically, as stated in sec. 6(c) of TSCA, this conclusion incorporates consideration of:

1. The effects of the chemical substance on the health of humans.

2. The magnitude of human exposure to the chemical substance.

3. The benefits of the chemical substance for various uses.

4. The availability of substitutes for such uses.

5. The reasonably ascertainable economic consequences of regulation, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

The Agency realizes that no single mathematical formula can be used to calculate unreasonable risk, since the amount and nature of the information will differ in each case. Instead, EPA applies a general approach on a case-by-case basis, weighing quantitative information with qualitative factors, and applying generally accepted principles of responsible public health administration and prudent public policy.

Under section 9(a)(1) of TSCA, the Administrator is required to submit a report to another Federal agency when two determinations are made. The first determination is that the Administrator has reasonable basis to conclude that a chemical substance or mixture presents or will present an unreasonable risk of injury to health or the environment. The second determination is that the unreasonable risk may be prevented or reduced to a sufficient extent by action taken by another Federal agency under a Federal law not administered by EPA. Section 9(a)(1) provides that where the Administrator makes these two determinations, EPA must provide an opportunity to the other Federal agency to assess the risk described in the report, to interpret its own statutory authorities, and to initiate an action under the Federal laws that it administers.

Accordingly, section 9(a)(1) requires a report requesting the other agency: (1) To determine if the risk may be prevented or reduced to a sufficient extent by action taken under its authority, and (2) if so, to issue an order declaring whether or not the activities described in the report present the risk described in the report.

Under section 9(a)(2), EPA is prohibited from taking any action under section 6 or 7 with respect to the risk reported to another Federal agency pending a response to the report from the other Federal agency. There would be no similar restriction on EPA for any risks associated with a chemical substance or mixture that is not within the section 9(a)(1) determinations and therefore not part of the report submitted by EPA to the other Federal agency.

The second agency may take one of five possible actions set out below. The Administrator may not take any action under section 6 or 7 with respect to such risk if the other agency either:

(1) Issues an "order" within the EPA deadline, stating that the activities EPA has described do not present the "unreasonable risk" EPA has attributed to them; or

(2) "Initiates" within 90 days of its response to EPA action to "protect against" the risk identified by EPA.

On the other hand, EPA may take further action if the other agency either:

(1) Determines that its law does not authorize action to prevent or reduce the unreasonable risk to a sufficient extent; or

(2) Explicitly defers to EPA despite the existence of adequate authority on its part (unless its own statutory authority precludes such action), presumably on the ground that action by EPA is preferable on practical or public policy grounds; or

(3) Does nothing, in which case EPA, once the deadline has expired, remains free to act as before.

III. Findings Under Section 9(a)

In this unit, EPA discusses the findings used to support its decision to refer 4,4'-MDA to OSHA. Units A through C are a summary of the factors used to assess the potential risks to workers exposed to 4,4'-MDA. Details of the evidence used to estimate the risks from exposure to 4,4'-MDA, and of the conclusions reached based on that evidence, are presented in the EPA support document "Risk Characterization for 4,4'-Methylenedianiline". Units D and E are a summary of the benefits of the continued use of 4,4'-MDA, and the potential consequences of regulatory action. Units F and G present the conclusions with respect to the unreasonable risk determination and the determination that the risk can be reduced to a sufficient extent by OSHA.

A. The Effects of the Chemical Substance on Health

In conducting risk assessments of suspect carcinogens, EPA generally evaluates the overall weight of evidence including both primary and secondary evidence of carcinogenicity. As specified in the EPA Proposed Guidelines for Carciogen Risk Assessment (Ref. 3), primary evidence derives from long-term animal studies and available epidemiological data. Secondary, or supplemental, evidence includes structure-activity relationships, the results of short-term tests, pharmacokinetic studies, comparative metabolism studies, and other toxicological responses which may be relevant.

Based upon the weight of available evidence, EPA classifies 4,4'-MDA as a probable human carcinogen. The Guidelines cited above give this classification when

> evidence of human carcinogenicity from epidemiological studies ranges from almost 'sufficient' to 'inadequate.' To reflect this range, the category is divided into higher (Group B1) and lower (Group B2) degrees of evidence. Usually, category B1 is reserved for agents for which there is at least limited evidence of carcinogenicity to humans from epidemiological studies. In the absence of adequate data in humans, it is reasonable, for practical purposes, to regard agents for which there is sufficient evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans. Therefore, agents for which there is inadequate evidence from human studies and sufficient evidence from animal studies, [as with 4,4'-MDA] would usually result in a classification of B2.

1. Animal Studies.

There is sufficient evidence of carcinogenicity in animals to support the cited classification of 4,4'-MDA. In NTP bioassays the dihydrochloride of the chemical was found to be carcinogenic upon oral administration in both sexes of two species (rats and mice) and caused tumors at multiple sites in each species. Significantly increased incidences of tumors were observed in the thyroid and the liver in both sexes of both species. The sites of response in the mouse also included the adrenal glands (males), and the lung and lymph nodes (females). Several extremely rare tumor types with very low spontaneous incidence were also observed in this study. These included one bile duct adenoma in a male rat (spontaneous incidence in historical control rats of 0/3633), transitional cell papillomas of the urinary bladder in three female rats (spontaneous incidence in historical controls of 3/3644), and granulosa-cell tumors, including one carcinoma, in five female rats (11 such tumors and one such carcinoma in 3462 historical control rats). Observation of these rare tumors in this single study in test groups consisting of only 50 animals is a sign of chemical specificity and is highly significant evidence of the carcinogenic potential of 4,4'-MDA. Thyroid tumors in rats were also observed in a limited bioassay performed by Hiasa et al. (Ref. 4). In another study of rats treated with 4,4' -MDA by subcutaneous injection, Steinhoff and Grundmann (Ref. 11) concluded that the results suggested carcinogenic activity. Other studies on the oncogenic potential of 4,4' -MDA have been conducted, but were not

adequate in design or performance for conclusions to be reached.

2. Epidemiological Studies

Only one epidemiology study is available. This proportional mortality study was reported in 1983 by the National Institute of Occupational Safety and Health (NIOSH) (Ref. 7). It was conducted at a site of manufacture of helicopters where exposure to epoxy resins and curing agents, including 4,4'-MDA, was measured. NIOSH studied the death notices and available death certificates of deceased active or retired workers for the years 1968–1980 for workers who had been employed for 10 years or longer. Of that number, 179 while male workers had worked at least one month in areas where the would potentially have been exposed to one or more of the epoxy resins and curing agents. NIOSH studied information on the 179 white male deaths that occurred from all causes and found a significant excess of bladder cancer-related deaths over the expected proportion. This excess remained significant in analysis of only the cancer deaths.

3. Structure-Activity Relationship

Structure-activity considerations are strongly supportive evidence of the human carcinogenic potential of 4,4'-MDA. The chemical is a member of the structural class of bis 4-aminobenzenes in which two benzene rings are separated by —CH_2—, —O—, or —S— groups. Members of this structural class included 4,4'-oxydianiline, 4,4'-thiodianiline, and 4,4'-methylenebis (N,N-dimethylaniline), all of which have been found to cause neoplasms in the liver and thyroid of rodents, as does 4,4'-MDA. Other members of this class, 4,4'-methylene bis (2-methylaniline), and benzidine, the structural analogue of 4,4'-MDA in which they methylene bridge between the aromatic rings is absent, have been associated with an increased risk of bladder tumors in humans.

4. Absorption

Further support for EPA's conclusion that the chemical poses a cancer hazard to humans is the fact that the chemical is absorbed by the human body. 4,4'-MDA is known to be absorbed by humans through the skin in workplace settings. Information from the United States, Canada and France attests to the dermal absorption of the chemical, and the scientific literature documents cases of the liver toxicity of 4,4'-MDA following dermal exposure along with detection of the chemical in the urine of workers exposed by this route.

It is expected that 4,4'-MDA will also be absorbed through the lung. Since the chemical has been shown to penetrate human skin and to be absorbed through the human gastrointestinal tract (in the so-called Epping Jaundice Incident), EPA believes it reasonable to anticipate that the chemicals will penetrate lung tissue as well.

5. Mutagenicity

In short-term tests, 4,4'-MDA has been shown to be a gene mutagen in prokaryotic systems. The chemical induces sister chromatid exchanges in femoral bone marrow of male mice; it does not induce chemosomal aberations *in vitro* in human peripheral lymphocytes. (A mixture of positive and negative results is not unusual in tests for genotoxicity since the tests measure different endpoints.) In addition, the compound binds covalently to DNA *in vitro* in the livers of treated mice, indicating its ability to interact with macromolecules of *in vivo*.

6. Summary

Taken together, the strongly positive results in the NTP cancer bioassay in the dihydrochloride salt of 4,4'-MDA, evidence of the carcinogenicity in animals and of humans 4,4'-MDA structural analogues, the demonstrated ability of 4,4'-MDA to induce bladder tumors in animals and suggested evidence of MDA-induced bladder tumors in humans, and data indicating the ability of 4,4'-MDA to interact with genetic material, lead to the conclusion that this chemical is carcinogenic in animals and is probably carcinogenic in humans.

B. The Magnitude of Human Exposure

Exposure of human populations to a chemical substance is one element of the determination of its risk. The general risk is the probability that a certain event (in this case, cancer) would occur at certain levels of exposure. The following units present levels and duration of worker exposure in different workplace conditions.

1. Populations of Concern

The two major use categories of 4,4'-MDA, MDI production and non-MDI use and processing, present two different exposure situations. The manufacture of 4,4'-MDA and its conversion to MDI takes place in an enclosed system. Exposure during the manufacture and conversion processes would be limited to inhalation of vapors and contact with liquid releases or with material deposited on surfaces as a result of condensation of vapors. The filling of containers with liquid or solid 4,4'-MDA is a source of exposure through the inhalation of dust and through dermal contact.

The non-MDI uses of 4,4'-MDA present the potential for dermal contact and inhalation of dust resulting from the removal of 4,4'-MDA from the containers and formulation of products. Incidences of exposure in the non-MDI workplaces are expected to be greater because the operations are not enclosed and because more handling of the chemical and products is required.

a. *4,4'-MDA and MDI production.* 4,4'-MDA is produced in the United States by six companies at seven locations. The Chemical Manufacturers Association (CMA) reports that at these facilities about 600 workers are exposed to 4,4'-MDA for varying durations.

b. *Non-MDI uses.* The identified non-MDI uses of 4,4'-MDA are:

(1) A curing agent for epoxy resins.

(2) An intermediate in the production of tetraglycidyl methylenedianiline (TGMDA), a speciality epoxy resin used in military aircraft and missiles.

(3) A coreactant in polyurethane production.

(4) An intermediate in the production of polyester-imide wire enamels.

(5) A component of PMR–15 polyimide, used in jet engine components.

(6) An intermediate for dyes.

The number of plants involved in the non-MDI uses of 4,4'-MDA is not known. Likewise, the number of workers exposed in the workplace is not known. Respondents to a survey of the non-MDI industry, conducted by CMA, indicated that a total of 1,371 employees in 79 locations were potentially exposed to 4,4'-MDA. Those who responded accounted for 85 percent of all 4,4'-MDA used for non-MDI purposes and 47 percent of the 4,4'-MDI sold by the producers and importers for use outside of their plants. On the other hand, the National Occupational Hazard Survey reports (Ref. 6) that an estimated 13,000 workers nationwide may experience some workplace exposure to 4,4'-MDA.

2. Exposure Information

Three major sources of exposure information are used in this assessment: (1) Air monitoring data submitted voluntarily by manufacturers and processors (Ref. 1); (2) air monitoring data compiled by an EPA contractor (Ref. 9) for manufacturers, processors and users; and (3) measurements made by the NIOSH during visits to a 4,4'-MDA manufacturing plant that makes 99 percent assay product and to a facility that uses 4,4'-MDA as a curing agent for epoxy-coated, filament-wound pipe (Refs. 5 and 6). The estimates of dermal

exposure to 4,4'-MDA used in this assessment in both MDI and non-MDI manufacturing facilities are based on data from the NIOSH visits. Those references are available in the public record.

Dermal exposure data are derived from measurements made by NIOSH (Refs. 5 and 6). A golf glove-like device was used to monitor both direct contact with contaminated surfaces by the palm, and general work environmental deposition on the other body surfaces by collecting the chemical on the back of the hand.

Several different analytical methods have been used to measure airborne concentrations of 4,4'-MDA. One, known as the Marcali colorimetric method, measures other aromatic amines and isocynates that may also be present, resulting in a high reading. Other methods may record low results due to sample losses. The Agency has assumed that the available data provide upper and lower bounds on actual exposure levels and are therefore reasonable for estimating risks.

Estimates of the inhalational exposures that the workers experience in a 4,4'-MDA/MDI manufacturing plant can be made using information supplied by the manufacturers of 4,4'-MDA (Ref. 1). The data include ranges and averages of 8-hour Time Weighted Average (TWA) air concentration measurements in the workplace.

C. Risk Estimates

Several assumptions regarding human exposure were used to estimate total lifetime average daily doses (LADDs) [2] and human carcinogenic risk. The assumptions were based on what EPA believes to be reasonable exposure situations and workplace practices. The LADDs were calculated for each combination of exposure concentration, exposure duration, frequency and extent, and percent absorption. The LADDs were then applied to calculate the increased lifetime carcinogenic risk for a single individual using the Crump multistage model (Ref. 2) and tumor incidence data on all tumors that occurred in the test animals of the NTP bioassay at statistically significant rates. The multistage model has been in wide use in EPA since 1980, and is used by EPA's Carcinogen Assessment Group to set air and water quality criteria and standards.

For estimating the rate of dermal absorption of 4,4'-MDA, methylene bis(w-choroaniline) (MBOCA) was used as an analogue. Not only is MBOCA a good structual analogue, but is also has similar physicochemical properties which can be used to make inferences regarding the penetrating potential 4,4'-MDA. Sufficent information is available on MBOCA to make general conclusions about the absorption of 4,4'-MDA.[3]

Eight different situations were designed to estimate the effects of various workplace situations on the existing risk to workers. The exposure situations are explained in detail in the draft support document "Risk Characterization for 4,4'-Methylenedianiline." They include one 4,4'-MDA/MDI manufacturing case and seven 4,4'-MDA user/processing cases. In every case except one, actual monitoring data were used to calculate dermal and inhalational exposures. The major differences in the user/processing cases were in the assumed duration of dermal exposure before washing and in the use of protective equipment. In the one case that did not use actual monitoring data, an assumed 8-hour TWA exposure level of 0.001 ppm (0.0081 mg/m^3) was used to estimate the effect of a workplace standard. Individual tumor sites were used to evaluate the risks to exposed workers. Pooling tumor sites would increase the risk estimates in each case by approximately a factor of two. The risk estimates are reported as a range, dependent upon the selection of tumor site, test animal, and statistical confidence level (maximum likelihood estimate or upper 95% confidence limit).

The results of the NTP bioassay, the evidence of the NIOSH proportional cancer mortality ratio study, and the strong structural relationship between 4,4'-MDA and other recognized human carcinogens, combined with generally accepted methods of estimating human risk based on well designed and well executed animal studies, allow a reasonable estimate of the levels of risk that result from certain situations to be made. More importantly for this analysis, relative risks that result in different exposure situations can be compared.

1. 4,4'-MDA/MDI Manufacturing

For the approximately 300 workers exposed for 8 hours per week or less, the NTP data indicate inceased lifetime cancer risk levels ranging from about 2 in 10,000 to about 4 in 1,000. For the 9 to 20 hours exposure per week group, numbering about 150 workers, the risk levels range from about 9 in 10,000 to about 1 in 100. For 40 hours per week group of about 150 workers, the risk levels range from about 1 in 1,000 to about 3 in 100.

2. 4,4'-MDA Use/Processing

For the workers who may be exposed for 8 hours per day during 40-hour week in facilities that use or process 4,4'-MDA under conditions where no protective clothing is used, and little or no attention is paid to washing off 4,4'-MDA that might be deposited on the skin, the individual lifetime risks could be in the range of 1 in 100 to 1 in 10, base on individual tumor site data from the NTP bioassay. The risks could be even higher if dermal exposure occurs for longer times or over greater body area than the arms, neck, and face.

If workers handle 4,4'-MDA while wearing latex gloves for 6 hours per day during a 40-hour work week without any hand washing during the day, the estimated lifetime risk levels that would be experienced range from about 9 in 10,00 to about 1 in 100.

The majority of the workers exposed to 4,4'-MDA are expected to handle 4,4'-MDA only briefly during the workday. They can experience a wide range of estimated risks from dermal exposure, depending on how promptly they wash off any deposited material. Washing within 15 minutes of exposure would subject a worker to estimated increased lifetime risk levels ranging from about 5 in 100,000 to about 8 in 10,000. If washing is delayed for 6 hours, the estimated risk levels rise from about 1 in 1,000 to about 1 in 100.

3. Hypothetical Workplace Standard.

If workers were exposed under the conditions of a workplace standard, which is based on 10 hours per week of dermal exposure, 40 hours per week of inhalation exposure at 0.001 ppm (0.0081 mg/m^3), and use of protective clothing and good industrial hygiene practices, the estimated increased lifetime risk levels would range from about 1 in 100,000 to about 2 in 10,000.

D. The benefits of 4,4'-MDA

EPA estimates that 400 million pounds of 4,4'-MDA are produced annually in the United States for a range of uses. About 98 percent of domestic production

[2] The LADD is the amount of chemical that the worker is expected to absorb over this or her working career divided by the expected lifetime of the worker and by the worker's body weight. This number is used to relate the expected daily dose that a worker received to the dose that the test animals received in the NTP bioassay, and permits the comparison of observed tumor rates in test animals with possible tumor rates in exposed workers.

[3] In order to reduce the uncertainty of using MBOCA data, and to provide a basis for possible regulatory monitoring, EPA is conducting dermal absorption studies on Fisher rats, Hartley guinea pigs and Rhesus monkeys. The results of the study, expected in early 1985, will be provided to OSHA.

is used as a feedstock for the manufacture of 4,4'-methylenediphenyl diisocyanate. MDI is used as an intermediate to manufacture polyurethane products, including rigid foams used for construction, insulating and packaging purposes, and to produce coatings, adhesives and elastomeric man-made fibers. No substitutes exist for 4,4'-MDA in the production of MDI. The benefits of MDI include its low cost compared to alternative intermediates used to manufacture polyurethane forms, and its outstanding physical properties (abrasion and chemical resistance, light-weight, and strength) associated with MDI-based elastomers and coatings.

Other benefits of 4,4'-MDA derive from its use as a reactive intermediate in the manufacture of epoxy resins, wire coatings, polyurethane coreactants, dyes and pigments, and high temperature-resistant resins. In epoxy resin applications, the chemical is used both as a curing agent and the unique intermediate for the production of the high performance epoxy resin, tetraglycidyl methylene dianiline (TGMDA). Here also, 4,4'-MDA's advantage over competitive substances derives from its low cost and the desirable properties it imparts to the resulting products. TGMDA, for example, is used to produce high performance structural materials for aerospace applications, and no substitute for TGMDA is commercially available.

Functionally analogous chemicals are potential substitutes for the non-MDI uses of 4,4'-MDA, but their feasibility cannot be fully evaluated without product testing. EPA's analysis, supported by comments, concludes that these chemicals would generally not be technically or economically feasible. See the support document "4,4'-Methylenedianiline Use and Substitutes Analysis" for a complete discussion on substitutes.

E. The Reasonably Ascertainable Consequences of Potential Regulation

This unit concentrates on the regulatory measures that could be used to control exposure in the workplace. As discussed below, EPA has concluded that workplace control methods appear both technologically and economically feasible to control 4,4'-MDA exposure within acceptable limits. A workplace standard could include engineering controls, such as the use of general or local ventilation, and personal protective equipment, such as gloves, masks, and coveralls.

1. Engineering Controls

Industrial ventilating systems offer one method for reducing exposures to a toxic material such as 4,4'-MDA. The protection provided by ventilation would not be sufficient in situations where skin contact is also a problem. Although either local exhaust ventilation or higher volume general dilution air systems can be used, the ideal situation is to have the operation completely enclosed, providing access and working openings only as needed. A chemical laboratory hood or "glove box" arrangement, connected to a local exhaust system, is an example of a local exhaust system used when handling highly toxic material. The cost of such equipment is relatively high, however, and their use could be awkward or impractical in many of the industrial situations in which 4,4'-MDA is used. This might arise either because of the quantities that are handled or because the 4,4'-MDA is simply being introduced into another process or reactor.

The costs of ventilation systems for controlling 4,4'-MDA emissions are very site specific and depend upon such factors as the size of the operation and the physical design of the filling mechanism. Because the specifics of plant design at reprocessing facilities are not known the costs of such equipment cannot be accurately estimated.

The filling of containers (drums, barrels, bags, etc.) with dry 4,4'-MDA or with liquid forms presents a potentially significant source of exposure. Both inhalation and skin contact could result from dusting, spills or inhalation of vapors of the heated, molten product. Relatively standardized engineering designs are available to control these problems.

The costs of these engineering controls can be estimated because suitable off-the-shelf equipment is available. Various hooding arrangements are in use in industry to draw dust particles away from the worker during material handling operations (i.e., transport, mixing with other chemicals, and small packaging operations).

2. Personal Protective Equipment and Industrial Hygiene Practices

Personal protective equipment and industrial hygiene practices are effective ways to protect the worker from exposure to 4,4'-MDA in certain situations. Equipment that may be considered include impervious gloves and protective clothing (including footwear). The information available to EPA indicates that eye protection and respirators are already available.

Virtually all of the acute exposures to 4,4'-MDA reported in the literature have been dermal with primary contact at the hands. While cotton work gloves are commonly used in industries using 4,4'-MDA, this practice cannot be recommended since cotton gloves trap and retain 4,4'-MDA particles close to the skin resulting in a greater risk than if no gloves had been used. Gloves that are impervious to 4,4'-MDA are recommended. Our information indicates that polyvinyl chloride (PVC), natural latex, and polyethylene are the best candidates for personal protective equipment.

Because polyethylene is impervious to 4,4'-MDA, polyethylene-coated Tyvek® was the material chosen to estimate the cost of protective clothing. For the calculation of annual cost per worker it was estimated that coveralls would be changed daily.

The importance of prompt washing of exposed skin areas following exposure is shown in the exposure reduction estimates. An after-work shower is another important measure in reducing exposure, as is the availability of separate work clothes and street clothes storage locker facilities to avoid cross-contamination and track-out problems for workers and their families.

An example of exposure reduction using personal protective equipment and industrial hygiene practices is a study of exposures in a facility of the Rhone-Poulenc Industrie in France (Ref. 9). This source provided only qualitative information regarding workplace environment exposures, but did present quantitative information on levels of 4,4'-MDA in the workers' urine. During a period in which labor and management were apparently unaware of the significance of dermal exposures, workers wore "divers' suits" to protect against inhalation exposure. During this time (1970), 14.9 percent of urine samples tested showed levels of 4,4'-MDA of at least 200 ug/L.

Gradually heightened awareness of the significance of the dermal exposure route revealed that 4,4'-MDA dust was being inadvertently allowed to contaminate the "divers' suits" and the general workplace environment. As this problem was uncovered and corrected, the levels of 4,4'-MDA in workers' urine and the frequency with which it was found in those samples both fell. By 1978, 2.7 percent of samples were found to contain 20–80 ug/L of 4,4'-MDA, 2.0 percent contained 80–200 ug/L, and 4.0 percent contained over 200 ug/L of the chemical. From 1978 through 1980

further improvements in industrial hygiene resulted in urine monitoring results that showed 0.9 percent of samples containing 20–80 ug/L, with no samples containing higher levels.

This case demonstrates both the extent to which workers can be exposed through a lack of precaution and the feasibility of reducing exposures through improved workplace practices.

3. Costs of Controls

EPA has prepared a preliminary economic analysis of the costs associated with the imposition of workplace controls (consisting of engineering controls and personal protective equipment) on both the manufacturers of 4,4'-MDA and on the non-MDI users of 4,4'-MDA. The analysis ("Preliminary Economic Impact Analysis of the Effect of TSCA Regulatory Action on 4,4'-Methylenedianiline") presents fully the methodology, data, and assumptions used in arriving at the costs. In summary, the imposition of workplace controls that approximate the hypothetical standard of 0.001 ppm (0.0081 mg/m^3) used to estimate the risk reductions described in paragraph III.C above, would result in an annual incremental cost of $1.1 million to the non-MDI users of MDA and $0.63 million to the 4,4'-MDA manufacturers.

F. Unreasonable Risk Determination

Available evidence indicates that 4,4'-MDA is a carcinogen to mice and rats and a probable human carcinogen. Using the results of that study, with reasonable assumptions of inhalational and dermal absorption rates, estimates were made of the existing risk to workers from cancer. Depending upon the industrial hygiene measures, protective equipment, and engineering controls being employed, risks can range from approximately 1 in 10 in uncontrolled circumstances to 1 in 100,000 in very tightly controlled circumstances. Workplace standards that employ all three can reduce risks to within a range of 2 in 10,000 to 1 in 100,000. Considering that probably less than 10,000 workers are potentially exposed to 4,4'-MDA, most for less than 40 hours per week, the actual risk will be lower.

The Agency's best estimate of the costs of requiring a workplace standard throughout the industry is an annual incremental $1.1 million to the non-MDI users of 4,4'-MDA and $0.63 million to the manufacturers. Considering that at existing risk levels, between 100 and 1,000 excess cancers could be avoided over a 40-year work period by the imposition of workplace standards, the cost per worker protected of between $80,000 and $800,000 is reasonable. The Agency does not anticipate that the costs of controls will have any impact on the national economy or on small businesses. EPA therefore believes that the existing manufacturing and uses of 4,4'-MDA present an unreasonable risk of injury to the health of exposed workers.

G. Unreasonable Risk May Be Prevented or Reduced to a Sufficient Extent by Action Taken Under OSHAct

All known exposure to 4,4'-MDA occurs in the workplace. The OSHAct is the primary statute for protecting the health and safety of workers, and, as such, provides OSHA with broad authority to regulate chemical risks in the workplace. In general, OSHA must show that existing risks are significant and that proposed controls are technically and economically feasible. OSHA has a number of regulatory options, including establishing a permissible exposure limit and/or requiring use of personal protective equipment, labeling, worker exposure monitoring, medical surveillance, and other industrial hygiene practices.

As discussed in the units on Findings and Unreasonable Risk Determination, a workplace standard can reduce unreasonable risks from 4,4'-MDA manufacture, processing and use to a sufficient extent. The requirement of such a workplace standard is clearly within the statutory authority of OSHA. Furthermore, OSHA has experience and expertise in enacting and enforcing these types of regulations. EPA therefore determines that the unreasonable risk of injury to the health of exposed workers may be reduced or prevented by actions taken by OSHA under the Federal law it administers.

IV. Conclusion

Based upon the information in this report, and the supporting documents from which the information was extracted, the Administrator of EPA has concluded that the manufacture and use of 4,4'-MDA, as currently practiced, present an unreasonable risk of cancer to workers. The Administrator has also determined that such risk may be eliminated or reduced to a sufficient extent by actions taken under the OSHAct. Therefore, under requirements of sec. 9 of TSCA, the Agency is requesting OSHA to:

1. Determine if the risk described in this report may be prevented or reduced to a sufficient extent by action taken under the OSHAct; and,

2. If so, issue an order declaring whether or not the risk described in this report is unreasonable.

We ask that OSHA respond to our request for the determination and order within 180 days of the date of the publication of this notice in the **Federal Register**. In accordance with sec. 9, the response from OSHA must be accompanied by a detailed statement of OSHA's findings and conclusions and must be published in the **Federal Register**.

V. Public Record

EPA established a record for this notice (docket number OPTS-91001). The record for the ANPR (OPTS-64000A) and for the sec. 4(f) (OPTS-64000) are included in the new record. Nonconfidential information along with a complete index is available for inspection in the Office of Toxic Substances reading room from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. The Agency also maintains a record of confidential information that is not a part of the public record. The Public Information Office is located in Rm. E–107, 401 M St. SW., Washington, D.C. 20460. This record includes basic infomation considered by the Agency in developing the ANPR and this notice. The Agency will supplement the record with additional information as it is received.

A. References

(1) CMA. 1983. Response of the Chemical Manufacturers Association Methylenedianiline Panel to EPA's Section 4(f) Designation for MDA. June 27, 1983.

(2) Crump, K.S., 1981. An Improved Procedure for Low-Dose Carcinogenic Risk Assessment from Animal Data. J. Environ. Path. and Toxicol. 5:2, 675–684 (1981).

(3) Federal Register, November 23, 1984. 49:46294.

(4) Hiasa, Y., Kitahori, Y., Enoki, N., Konishi, N., and Shimoyama, T. 4,4'-Diaminodiphenylmethane; Promoting Effect on the Development of Thyroid Tomors in Rats Treated with N-bis (2-hydroxypropyl) Nitrosamine. J.N.C.I. 72: 471–476 (1984).

(5) NIOSH, 1984a. Industrial Hygiene Survey Report of Olin Corporation, Moundsville, WV. Dr. Mark Boeniger, Industrial Hygiene Section National Institute for Occupational Safety and Health, Cincinnati, OH. March 1984.

(6) NIOSH, 1984b. Industrial Hygiene Survey Report of A.O. Smith/Inland Corporation, Little Rock, AR. Dr. Mark Boeniger, Industrial Hygiene Section, National Institute for Occupational Safety and Health, Concinnati, OH. February 1984.

(7) NIOSH, 1983. Health Hazard Evaluation Report. HETA 82–146–1388 Boeing Vertol Company, Philadelphia, PA. November 1983.

(8) NOHS, 1983. Aniline, 4,4'-Methylenedi- National Occupational Hazard Survey

Observed Exposures Weighted to National Estimates of Exposure for 1980. June, 1983.
(9) PEDCo, 1983. PEDCo Environmental, Inc. 11499 Chester Road, Cincinnati, OH., 45246-0100. Exposure to and Control of 4,4'-Methylenedianiline. Contract No. 68-02-3935. Work Assignment 1-5. October 1983.
(10) NTP, 1983. Carcinogenesis Studies of 4,4'-Methylenedianiline Dihydorchloride in F344/N Rats and B6C3F1 Mice. National Toxicology Program Technical Report, Series, No. 248. NTP-81-143, NIH Publication No. 83-2504. June 1983.
(11) Steinhoff, D. and Grundmann, E., 1970. Carcinogenic Action of 4,4'-Diaminodiphenylmethane and 2,4'-Diaminodiphenylmethane. Naturwissenschaften 57, 247 (1970).
(12) Vaudaine, M., Lery, N., Diter, J.N., Droin, M. and Charnaillard, C., 1982. Diamino-Diphenyl Methane: An Example of Toxic Agent Monitoring in the Workplace at Rhone-Poulenc Industrie. J. Toxicol. Medicale 2: 207 (1982).

B. Support Documents

(1) Alternative Methods to Control Exposures to 4,4'-MDA: Prepared by PEDCo. Environmental, Inc., March 1984.
(2) Exposure to and Control of 4,4'-Methylenedianiline; prepared by PECDo. Environmental, Inc., October 1983.
(3) Exposure Assessment for Methylenedianiline (MDA); prepared by Versar, Inc., September 1983.
(4) 4,4'-Methylenedianiline Use and Substitutes Analysis; prepared by ICF, Inc., July 1984.
(5) Preliminary Economic Impact Analysis of the Effect of Regulatory Action on 4,4'-Methylenedianiline; prepared by ICF, Inc., July 1984.
(6) Draft Risk Characterization for 4,4'-Methylenedianiline; prepared by the Office of Toxic Substances, EPA, J.W. Hirzy, December 1984.
(7) The Use of Polymeric Films as a Packaging Material for 4,4'-MDA; prepared by PEDCo. Environmental, Inc., February, 1984.

Copies of all references and support documents are available for inspection in Rm. E-107, at the EPA address given above. OSHA's response to EPA will also be inserted in the public record upon its receipt.

Dated: June 26, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-16095 Filed 7-3-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2859-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 17, 1985 through June 21, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-F65012-MI, Rating EC1, Huron and Manistee Nat'l Forests, Land and Resource Mgmt. Plan, MI. **SUMMARY:** EPA believes that the Bear Swamp area should be managed as a semiprimitive, non-motorized area to preserve the opportunity for high quality semiprimitive experiences without man-made intrusions. The lack of habitat for fish and wildlife species that avoid human activities appears to be in conflict with the indicated planning goals. EPA also expressed concern with the selection of an alternative which would allow for development of the Tower Mountain area for downhill skiing without any apparent further analysis of the impact of such a development.

Final EISs

ERP No. F-MMS-A02198-00, 1985 S. Atlantic OCS Oil and Gas Lease Sale No. 90, Offshore VA, NC, SC, GA, FL. **SUMMARY:** Many of EPA's major concerns expressed at the DEIS stage have been removed in the FEIS because the proposed Sale has been reshaped to delete sensitive lease tracts. Our remaining major concerns stem from the offering of 113 blocks in the Southern Block Group which includes shallow water shrimp and scallop beds. Imposing the environmentally protective stipulations, along with selecting Alternative 4, which defers leasing of the Southern Block Group, would remove EPA's major environmental concerns.

ERP No. F-SCS-L36098-ID, Little Lost River Flood Prevention Plan, ID. **SUMMARY:** EPA made no formal comments. EPA believes that the FEIS adequately responds to the issues raised in our comments on the DEIS.

ERP No. F-SFW-L64026-AK, Bristol Bay Region, Cooperative Mgmt. Plan, AK. **SUMMARY:** EPA suggested that the series of agreements, to formally link the BBRMP and the State of Alaska Area Plan, pursue personnel allocations and adequate funding to carry out agency responsibilities as thy relate to the BBRMP.

Regulations

ERP No. R-FCC-A86218-00, 47 CFR Part 1, Biological Effects of Radiofrequency Radiation and the Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation, Amendment of NEPA Regs. (50 FR 10814). **SUMMARY:** EPA supports the basic thrust of the final order amending FCC's rules to provide for the evaluation of human exposure to radiofrequency radiation in the environmental analysis required by NEPA and to establish exposure levels as one trigger for such environmental reviews. Concerns were raised with the categorical exclusions that are proposed in this notice. Many of the systems proposed as categorical exclusions can produce exposures that may exceed the exposure limits recommended by the ANSI guidelines and therefore should be subject to some level of environmental analysis to determine these potential impacts.

Dated: July 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-16096 Filed 7-3-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2858-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075

Availability of Environmental Impact Statements filed June 24, 1985 Through June 28, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850267, FSuppl, COE, NC, Manteo (Shallowbag) Bay Project, Dredging, Design, Dare County, Due: August 15, 1985, Contact: Richard Jackson (919) 343-4745.

EIS No. 850268, Final, EPA, FL, Southwest Orange County Wastewater Facilities Construction, Grant, Southwest Orange County, Due: August 5, 1985, Contact: Robert Cooper (404) 881-3776.

EIS No. 850269, Final, MMS, CA, Point Pedernales Field Offshore Oil and Gas Outer Continental Shelf Development Projects, Approval, Central Santa Maria Basin, Santa Barbara County, Due: August 5, 1985, Contact: Donna Brewer (213) 688-4480.

EIS No. 850270, Draft, FHW, KY, US 31E/150 (Bardstown-Louisville Road) Reconstruction, Brentlinger Road to US 31E/150, Jefferson, Bullit, Spencer, and Nelson Counties: Due: August 19,

1985, Contact: Donald Ecton (502) 564-7183.

EIS No. 850271, Draft, AFS, UT, ID, Sawtooth National Forest, Land and Resource Management Plan and Wilderness Designation, Due: October 5, 1985, Contact: Rowland Stoleson (208) 737-3200.

EIS No. 850272, Draft, FHW, HI, Moanalua Road Improvement, Pali Momi Street to Aiea Interchange, Honolulu County, Due: August 26, 1985, Contact: H. Kusumoto (808) 546-5150.

EIS No. 850273, Draft, CDB, MA, Tent City Development, Parcells 11A and 11B, South End Urban Renewal Area, UDAG, Suffolk County, Due: August 19, 1985, Contact: Richard Mertens (617) 722-4300.

EIS No. 850274, Final, BLM, NV, Walker Resource Area, Mina and Walker Units, Land and Resource Management Plan, Lyon, Douglas, and Mineral Counties, Due: August 5, 1985, Contact: Thomas Owen (702) 882-1631.

EIS No. 850275, Draft, FHW, OR, Mt. Hood Highway/US 26 Improvements, Wildwood to Rhododendon, Clackamas County, Due: August 29, 1985, Contact: Dale Wilken (503) 399-5749.

EIS No. 850276, Draft, AFS, NM, Lincoln National Forest Land and Resource Management Plan, Chave, Eddy, Lincoln and Otero Counties, Due: October 18, 1985, Contact: James Abbott (505) 473-6030.

EIS No. 850277, DSuppl, DOE, CO, Hayden to Blue River 345kV Transmission Line Project, Blue River to Gore Pass Portion, Operation, Construction, and Maintenance, Grand and Summit Counties, Due: August 19, 1985, Contact: Bill Melander (303) 224-7231.

EIS No. 850278, Draft, CDB, MI, Cobo Hall Convention Center, Renovation and Expansion, UDA and CDB Grants, Wayne County, Due: August 31, 1985, Contact: Thomas Andrews (313) 224-6380.

EIS No. 850279, Draft, AFS, WY, Shoshone National Forest, Land and Resource Management Plan, Due: October 3, 1985, Contact: Stephen Mealey (307) 527-6241.

Amended Notices

EIS No. 850237, Draft, AFS, NM, Western Spruce Budworm Management Program, Santa Fe National Forest, Published FR 5-13-85—Officially Withdrawn.

EIS No. 850235, Draft, AFS, NM, Alvarado Realty Land Exchange, Cibola National Forest, Acquisition, Bernalillo County, Due: August 3, 1985, Published FR 6-21-85—Incorrect due date.

EIS No. 850240, Final, UMT, WA, Downtown Seattle Transit Project, Seattle Business District, King County, Due: July 15, 1985, Contact: Terry Ebersole (206) 442-4210, Published FR 6-21-85—Incorrect phone number.

Dated: July 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-16097 Filed 7-3-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1522]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 26, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202 FM Table of Assignments. (Colonial Heights, Tennessee)

Filed By: Timothy K. Brady, Attorney for Murray Communications on 6-5-85.

Subject: Amendment of §§ 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications. (MM Docket No. 84-750)

Filed By: Eric R. Hiding on 6-4-85.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-16035 Filed 7-3-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Century Savings Association of Kansas, Shawnee Mission, KS; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Century Savings Association of Kansas, Shawnee Mission, Kansas, on June 26, 1985.

Dated: July 1, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-16040 Filed 7-3-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-441]

Citizens Savings and Loan Association, Rocky Mount, NC; Final Action Approval of Conversion Application

Dated: June 28, 1985.

Notice is hereby given that on June 24, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Citizens Savings and Loan Association, Rocky Mount, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-16039 Filed 7-3-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; S.T.S. International, Inc., et al.; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

S.T.S. International, Inc., 4219 Richmond Street, Philadelphia, PA 19137, Officers: William D. Staffieri, President/Director, D. Frazier Crane, Secretary/Director

Arthur L. Phillips, d.b.a. ALPS International, 2455 3rd Street, San Francisco, CA 94107

Brahm & Krenz International, Ltd., c/o 345 E. Parkway Estates Drive, Oak Creek, WI 53134. Officers: Delphin P. Brahm, President, Leo G. Krenz, Secretary

Boaz Export Crating Co., 15133 Jacintoport Blvd., Channelview, TX 77530. Officers: Danny Ray Boaz, President/Director, Ina Boaz, Secretary, Yoshikuni Unno, Vice President

Astral International Shipping Services, Inc., 2 Canal Street, I.T.M. Building, New Orleans, LA 70130. Officer: Thomas Mantis, President

By the Federal Maritime Commission.

Dated: June 28, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-15983 Filed 7-3-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Tiger Intermodal, Inc., et al.; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2572
Name: Tiger Intermodal, Inc.
Address: 211 E. Ocean Blvd.
Date Revoked: June 5, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2472
Name: Miguel M. Alvarado dba Exporters Service
Address: 4851 Homestead Ave., #110, Houston, TX 77028
Date Revoked: June 12, 1985
Reason: Failed to maintain a valid surety bond

License Number: 494
Name: George Ager dba George Ager Shipping Co.
Address: 33 Rector Street, 9th Floor, New York, NY 10006
Date Revoked: June 15, 1985
Reason: Failed to maintain a valid surety bond

License Number: 1351
Name: Hudsons International, Inc.
Address: 402 West Sixth Street, Houston, TX 77007
Date Revoked: June 17, 1985
Reason: Surrendered license voluntarily

License Number: 2819
Name: Deborah J. Puglisi dba Lincoln Customhouse Brokers and International Freight Forwarders
Address: 1499 W. Palmetto Park Rd., Boca Raton, FL 33432
Date Revoked: June 19, 1985
Reason: Voluntarily requested revocation

License Number: 1954
Name: Mover's International, Inc.
Address: P.O. Box 1294, Lynnwood, WA 98036
Date Revoked: June 20, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2186
Name: Marien, Inc.
Address: 2250 N.W. 96th Ave., #216A, Miami, FL 33172
Date Revoked: June 20, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2215
Name: North Atlantic Freight Forwarders, Inc.
Address: 148-23 94th Avenue, Jamaica, NY 11435
Date Revoked: June 23, 1985
Reason: Failed to maintain a valid surety bond

License Number: 1545
Name: Reliance Forwarding Corporation
Address: 4304 Ludlow Street, Philadelphia, PA 19104
Date Revoked: June 24, 1985
Reason: Voluntarily requested revocation.

Eugene P. Stakem,

Deputy Director, Bureau of Tariffs.

[FR Doc. 85-15984 Filed 7-3-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 222-002451-006.

Title: Seattle Marine Terminal Equipment Agreement.

Parties:

Port of Seattle (Port)

Sea-Land Service, Inc. (Sea-Land)

Synopsis: Agreement No. 222-002451-005, Crane Termination Agreement, between the parties, provided for the purchase of one Port owned container crane at Terminal 5, Seattle by Sea-Land for relocation to Alaska. Sea-Land has determined that it no longer requires use of the crane in Alaska and desires to sell the crane for use by the Virginia Port Authority in the State of Virginia. The Port has no objection to Sea-Land relocating crane No. 3 to the State of Virginia instead of the State of Alaska. Agreement No. 222-002451-006 amends Agreement No. 222-002451-005 to allow the relocation.

Agreement No.: 202-009548-029.

Title: United States Atlantic and Gulf/Eastern Mediterranean and North African Freight Conference.

Parties:

Constellation Lines S.A.

Farrell Lines, Inc.

Prudential Lines, Inc.

Lykes Bros. Steamship Co.

Synopsis: The proposed amendment would change the name of the agreement to reflect the addition of U.S. Gulf ports to the scope of the agreement and would also add minilandbridge authority for cargoes moving from U.S. Atlantic and Gulf coastal points via Atlantic and Gulf ports to destinations within the agreement's scope. The parties have requested a shortened review period.

Agreement No.: 224-010772.

Title: New York Terminal Agreement.

Parties:

The Port Authority of New York and New Jersey (Port Authority)

United States Lines, Inc. (USL)

Synopsis: Agreement No. 224-010772 provides for the lease of the land and premises at the Howland Hook Marine Terminal, New York Harbor, by the Port Authority to USL. The agreement will run for 35 years after the third anniversary of its effective date as determined by the Commission. The parties have requested a shortened review period for the agreement.

Agreement No.: 224-010773.

Title: New York Terminal Agreement.

Parties:

The City of New York (City)

The Port Authority of New York and New Jersey (Port Authority)

United States Lines, Inc. (USL)

Synopsis: Pursuant to Federal Maritime Commission Agreement No. T-4144, the City leased to USL land and terminal facilities at the Howland Hook Terminal in New York Harbor. Agreement No. 224-010733 provides that USL will assign its interest in the present lease, as covered by Agreement No. T-4144, to the Port Authority with

the consent of the City. The Port Authority will be responsible to the City to continue paying the rentals for a period expiring 35 years after the third anniversary of the effective date of the agreement as determined by the Commission. The parties have requested a shortened review period for the agreement.

Agreement No.: 221–010774.

Title: Savannah Terminal Agreement.

Parties:

Georgia Ports Authority (Georgia)

Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen)

Synopsis: Agreement No. 221–010774 provides that the Authority will grant exclusive use of paved container storage space at the Authority's Garden City Terminal in Savannah, Georgia. The initial term of the lease shall begin on the first day of the first month following the determination of the effective date of the agreement by the Commission, and it shall run for three years. Evergreen shall have the option to extend the lease for two additional years. Evergreen guarantees a minimum of 50,000 short tons of wharfage on containerized cargo shipped across the premises during each year of the agreement, and 100,000 short tons during each of the option years. Evergreen shall pay wharfage at lesser rates as provided for in the agreement when the tonnage requirements are met. The parties have requested a shortened review period for the agreement.

Agreement No.: 222–010775.

Title: Los Angeles Terminal Equipment Agreement.

Parties:

City of Los Angeles (City)

American President Lines, Ltd. (APL)

Synopsis: Agreement No. 222–010775 provides for the use by the City of a Paceco container crane located at Berth 93 in the Port of Los Angeles. The crane is owned by Wells Fargo Equipment Leasing Corporation and leased to APL. The agreement provides that the City will make the crane available at tariff rates to users of Berth 93. APL will receive the tariff revenues less an administrative charge of eight and one-half percent as provided in section 11.2 of the agreement for services provided by the City.

By Order of the Federal Maritime Commission.

Dated: July 1, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–16065 Filed 7–3–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

June 28, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension without revision of the following reports:

1. Report title: Survey of Terms of Bank Lending (STBL)

Agency form number: FR 2028A, 2028A-S, 2028B

OMB Docket number: 7100–0061

Frequency: Quarterly

Reporters: Commercial banks

Small businesses are affected.

General description of report: This information collection is voluntary 12 U.S.C. 248(a)(2) and is given confidential treatment 5 U.S.C. 552(b)(4).

The STBL collects information on interest rates, including the prime rate, and selected nonprice terms of lending on individual loans to business and farmers from a sample of insured commercial banks.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–15998 Filed 7–3–85; 8:45 am]

BILLING CODE 6210–01–M

Citicorp; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such

as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 24, 1985.

A. **Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary) Washington, DC 20551.

1. *Citicorp,* New York, New York; to engage through its subsidiary, Citicorp Futures Corporation, New York, New York, in the provision of futures commission merchant and futures advisory services to non-affiliated persons with respect to stock index and other financially related futures contracts and options thereon. This application may be inspected at the Federal Reserve Bank of New York. The provision of futures commission merchant services with respect to stock index futures contracts and options thereon has been approved by Board Order as permissible for bank holding companies, *J.P. Morgan & Co. Incorporated,* 71 Federal Reserve Bulletin 251 (1985). The provision of futures advisory services with respect to stock index future contracts and options thereon has not previously been approved by the Board.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15999 Filed 7-3-85; 8:45 am]

BILLING CODE 6210-01-M

MCORP et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) of the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 24, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCORP,* Dallas, Texas and *MCORP Financial, Inc.,* Wilmington, Delaware; to engage *de novo* through a subsidiary, MPACT Merchant Services Corp, Wilmington, Delaware, in the provision of data processing services to merchants, primarily to process paper arising from credit card transactions and to banks and other financial institutions that collect or process merchant paper.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16000 Filed 7-3-85; 8:45 am]

BILLING CODE 6210-01-M

Verbanc Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 26, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Verbanc Financial Corp.,* Bellows Falls, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of Bellows Falls Trust Company, Bellows Falls, Vermont.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Arkansas Bancshares, Inc.,* Malvern, Arkansas; to acquire 100 percent of the voting shares of First Financial Bancshares, Inc., Arkadelphia, Arkansas, thereby indirectly acquiring Merchants & Planters Bank & Trust Co., Arkadelphia, Arkansas.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Pioneer Bank Shares, Inc.,* Duluth, Minnesota; to become a bank holding company by acquiring 83.7 percent of the voting shares of Pioneer National Bank, Duluth, Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Weslayan Bancshares, Inc.,* Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Weslayan Bank, N.A., Houston, Texas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice

President) 101 Market Street, San Francisco, California 94105:

1. *Southern Arizona Bancorp,* Yuma, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Arizona Bank of Yuma, Yuma, Arizona.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16001 Filed 7-3-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted as OMB since the last list was published on June 28, 1985.

Public Health Service

Office of the Assistant Secretary for Health

Subject: Involuntary Child and Spousal Support Allotments; Public Health Service Commissioned Personnel—Reinstatement (0937-0123)
Respondents: Individuals or households

National Institutes of Health

Subject: Survey of the Last Days of Life—Extension (0925-0203)
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Color Additive Certification—Existing Collection
Respondents: Businesses, small businesses
Subject: Quick Turnaround Research Services—FDA 1986 Multipurpose Survey—New
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Court Ordered Regulations Prospective: Payment Amounts and Administrative Review—New
Respondents: Businesses, or other for-profit institutions, non-profit institutions, small businesses or organizations
Subject: Quarterly Medicaid Workload Report—HCFA-441—New
Respondents: State/local governments
Subject: Freedom of Choice: Waivers of and Exception to State Plan Requirements 42 CFR 431.54(f)(3) and 431.55(b)(2)—Extension (0938-0295)
Respondents: State/local governments
Subject: Pacemaker Related Data—HCFA-497—New
Respondents: Businesses, non-profit institutions or other for-profit institutions
Subject: Ambulatory Surgical Center Payment Rate Survey—HCFA-452—New
Respondents: State/local governments, businesses or other for-profit institutions, small businesses or organizations
OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: July 1, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-16003 Filed 7-3-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket Nos. 78P-0148 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for nine organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers, Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the nine organizations listed in the table below a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date/ termination date
79P-0148 (extension)	Laser Media, Inc., 2046 Armacost Ave. Los Angeles, CA 90025.	Laser Media, Inc. LM and LMS laser projection systems and laser shows assembled and produced by Laser Media, Inc. which incorporate any of these projectors and/or the Stingray and Chromaray Model Series projectors.	May 6, 1985, May 9, 1986.
80P-0151 (extension	Guptill Arena, Route 1, Cahoes, NY 12407	Laser light shows manufactured and produced by Guptill Arena incorporating a Science Faction Model SFC-2003 laser projector.	Mar. 27, 1985, June 10, 1987.
80P-0174 (amendant)	Laser Artistry, Inc. 9156 North 70th St., Milwaukee, WI, 53223.	Laser light shows produced by Laser Artistry Inc. which incorporate the Model L-100 laser projector or the Model LMS laser projector manufactured by Laser Media.	Mar. 25, 1985, Oct. 30, 1986.
81P-0044 (extension)	Laser Art Productions, 909 East Trafficway St., Springfield, MO 65802.	Laser Art Productions laser light show incorporating the Model Series LAP-265 laser projectors using a krypton, argon, helium-neon, and/or helium-cadmium laser with a maxium power of up to 8 watts.	Apr. 29, 1985, Apr. 9, 1986.
81P-0389 (extension)	Laser Affiliates/L.A.S.E.R. 2047 Blucher Valley Rd., Sebastopol, CA 95472.	Laser Affiliates/L.A.S.E.R. Laser Light Shows incorporating Class II, III, and/or IV helium-neon, argon, helium-cadmium, and/or krypton laser projectors.	Apr. 4, 1985, Dec. 8, 1986.
82P-0298	Ad Laser, Inc., 310 Via Vera Cruz, Suite 107, San Marcus, CA 92069.	Laser light shows and displays manufactured, asembled and assembled, and produced by Ad Laser, Inc., which incorporate the Model ALS-001 projector.	Apr. 29, 1985, Apr. 29, 1986.
83P-0085 (amendment and extension).	Hill Development Services Co. 2728 Martin Luther King, Jr. Way Berkely, CA 94703.	Laser light shows assembled and produced by Hill Development Services Co. incorporating the class IV Laserscope II krypton, the APB-1 argon, and the CP-1 argon/krypton laser projectors.	Mar. 27, 1985, Mar. 27, 1987.
83V-0144 (extension)	Stone Mountain Memorial Assn., P.O. Box 778 Stone Mountain, GA 30086.	Stone Mountain Memorial Association's fixed location laser light show "Night on Stone Mountain" and for mobile shows assembled and produced by Stone Mountain Productions incorporating the Laser Media Model LM argon and krypton projectors and the Model LMS argon projector.	May 31, 1985, May 31, 1987.
85V-0046	Laser Associates, Inc., Box 5010, Woodland Hills, CA 91365.	Class IV Laser Associates Model Lasertainer Mark I laser effects projector containing a mixed gas argon/krypton laser for laser light shows assembled and produced by Laser Associates, Inc.	Apr. 2, 1985, Apr. 2, 1986.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for

Director, Devices and Radiological Health (21 CFR 5.86).

Dated: June 27, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-15969 Filed 7-3-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 83V-0141 et al.]

Availability of Approved Variances for Laser Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for various models of laser products manufactured by two organizations. One of the laser products is used in a variety of medical, dental, biological, agricultural, and cosmetic applications while the other is used to provide a pattern of alignment lines for positioning of the patient prior to YAG laser surgery.

DATES: The effective dates and termination dates of the variances are listed in the table below under **"SUPPLEMENTARY INFORMATION."**

ADDRESS: Except for information regarded by law or regulation as confidential, the applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the organizations listed in the table below a variance from the requirements of the performance standard for laser products (21 CFR 1040.10). FDA has granted approval for the listed products to vary as specified from that portion of § 1040.10(f)(6) requiring a beam attenuator to reduce laser radiation output to below Class I limits. All other provisions of § 1040.10 remain applicable to the listed laser products.

CDRH has determined that: (a) The requirement of § 1040.10(f)(6) is not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by the existing equipment design and by conditions imposed by the terms of the variances. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Laser product	Effective date/termination date
83V-0141	International Laser, Inc., 17451/2 B.N. Orangethorpe Pk., Anaheim, California 92801.	Bio-Max HeliumNeon Laser, Models 600 and 610.	May 21, 1985-May 21, 1987 or upon completion of the approved investigational clinical trials, whichever occurs first.
84V-0445	HGM Medical Laser Systerms, Inc. 1628 South 3850 West Salt Lake City, Utah 84104.	Q-Swithched Nd:YAG capsulatory laser incorporating a HeNE laser aiming beam.	Apr. 29, 1985-Apr. 29, 1990.

Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that

office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control of Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: June 27, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–15971 Filed 7–3–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 77N–0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators—Nitroglycerin Buccal Tablets; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption for single-entity coronary vasodilator drug products containing nitroglycerin in controlled-release buccal tablet form. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. FDA also announces the conditions for marketing these products for the indications for which they are now regarded as effective.

DATES: The revocation of exemption is effective July 5, 1985; the deadline for full approval of conditionally approved new drug applications based on satisfactory bioavailability supplements is June 30, 1986; other supplements are due on or before September 5, 1985.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 77N–0240 (DESI 1786), directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to the conditionally approved abbreviated new drug applications (identify with ANDA number): Division of Generic Drugs (HFN–230), Rm. 16–70, Center for Drugs and Biologics.

Original abbreviated new drug applications: Division of Generic Drugs (HFN–230), Rm. 16–70, Center for Drugs and Biologics.

Requests for information on conducting bioavailability/bioequivalence tests: Division of Bioequivalence (HFN–250), Center for Drugs and Biologics.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 1786) published in the Federal Register of February 25, 1972 (37 FR 4001), FDA announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, on certain coronary vasodilator drugs. FDA classified controlled-release tablets of nitroglycerin as possibly effective for indications relating to the management, prophylaxis, or treatment of anginal attacks.

Notices published in the Federal Register of August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), amended earlier notices of December 14, 1972 (37 FR 26623) and July 11, 1973 (38 FR 18477) by temporarily exempting nitroglycerin in controlled-release forms from the time limits established for completing certain phases of the Drug Efficacy Study Implementation (DESI) program. The temporary exemption (under Category I) also applied to nitroglycerin in tropical ointment and conventional oral forms. The amending notices established conditions for marketing these products, including requirements for both bioavailability and clinical studies. The availability of guides and methods for conducting bioavailability and clinical effectiveness studies and the specific conditions under which the products could be marketed were published in the August 26, 1977 notice. Conditions were established for marketing of identical, similar, or related products (21 CFR 310.6) whether or not they had been marketed or whether or not they were subjects of approved new drug applications (NDA's). An abbreviated NDA (ANDA) was required for marketing of products not the subject of an NDA. The conditions provided for such products to be conditionally approved, pending the results of ongoing studies.

In the September 15, 1978 notice, FDA announced a change in the previously published conditions for testing and marketing single-entity coronary vasodilators. The change eliminated the requirement that each manufacturer conduct or participate in effectiveness studies and allowed a drug to remain on or enter the market even though its manufacturer was not conducting clinical studies of effectiveness, provided that some other manufacturer was conducting such studies on a product containing the same chemical entity in a similar dosage form. The notice also extended the dates for completing ongoing studies.

In response to the exempting notices, a number of firms submitted data and information to support effectiveness of the various nitroglycerin dosage forms exempt under Category I. Upon completing its evaluation of data submitted for nitroglycerin oral controlled-release tablets and capsules, the agency announced its conclusion that these dosage forms of nitroglycerin are effective for prevention of angina pectoris in a notice published in the Federal Register of September 7, 1984 (49 FR 35428).

The agency has completed its review of the data submitted for the buccal form of nitroglycerin and found that the data provide substantial evidence of effectiveness. This notice announces that conclusion and the conditions under which the products may be marketed.

Accordingly, the temporary exemption as it pertains to nitroglycerin in controlled-release buccal tablet form is hereby revoked.

Certain other nitroglycerin products remain exempt under Category I and will be the subjects of future Federal Register notices.

Forest Laboratories, Inc., submitted data to support the effectiveness of nitroglycerin buccal tablets. Two studies provide substantial evidence of the effectiveness of this dosage form in angina pectoris. The studies are double-blind, randomized, placebo-controlled, crossover trials involving exercise testing in a total of 31 patients. The data demonstrate significant improvement in exercise tolerance for 3 hours (and as long as 5 hours in some patients) after single doses (1–5 mg) of buccal nitroglycerin given prophylactically. Data from additional controlled clinical trials submitted (included a trial of rest and exercise invasive hemodynamics in 60 patients) show that buccal nitroglycerin has demodynamic effects similar to sublingual nitroglycerin the first 3 minutes after administration, and therefore may be useful for aborting an

acute attack of angina pectoris. Other submitted studies provide further supportive evidence of the effectiveness of buccal nitroglycerin in the treatment of angina pectoris. Among these is a placebo-controlled trial presenting evidence that buccal nitroglycerin continues to significantly improve treadmill time for up to 5 hours following a single dose in patients who have received a two-week course of the drug. The following studies provide substantial evidence of effectiveness:

1. Reichek, N., et al., "Angina Prophylaxis with Buccal Synchron Nitroglycerin: A Rapid Onset Long-Acting Nitrate," *Advances in Pharmacotherapy*, 1:143–154, 1982.

2. Lichstein, E., et al., "Efficacy of Buccal Synchron Nitroglycerin in Patients with Angina Pectoris," *Advances in Pharmacotherapy*, 1:166–173, 1982.

List of ANDA's

The following ANDA's, previously conditionally approved on the basis of safety, but not effectiveness, are subject to the finding and conditions stated in this notice:

1. ANDA 86–604; Sustachron Buccal Tablets containing 5 milligrams (mg) nitroglycerin per tablet; Forest Laboratories, Inc., 300 Prospect St., Inwood, NY 11696.
2. ANDA 87–171; Sustachron Buccal Tablets containing 2.5 mg nitroglycerin per tablet; Forest Laboratories.
3. ANDA 87–286; Sustachron Buccal Tablets containing 1 mg nitroglycerin per tablet; Forest Laboratories.
4. ANDA 87–322; Sustachron Buccal Tablets containing 1.5 mg nitroglycerin per tablet; Forest Laboratories.
5. ANDA 87–323; Sustachron Buccal Tablets containing 2 mg nitroglycerin per tablet; Forest Laboratories.
6. ANDA 87–615; Sustachron Buccal Tablets containing 3 mg nitroglycerin per tablet; Forest Laboratories.
7. ANDA 87–734; Susadrin Transmucosal Tablets containing 1 mg nitroglycerin per tablet; Merrell Dow Pharmaceuticals, Inc., subsidiary of The Dow Chemical Co., 2110 East Galbraith Rd., Cincinnati, OH 45215.
8. ANDA 87–735; Susadrin Transmucosal Tablets containing 2 mg nitroglycerin per tablet; Merrell Dow Pharmaceuticals.
9. ANDA 87–758; Susadrin Transmucosal Tablets containing 3 mg nitroglycerin per tablet; Merrell Dow Pharmaceuticals.

New Drug Status

A drug product that contains nitroglycerin in buccal (controlled-release) tablet form is regarded as a new drug (21 U.S.C. 321(p)), and an approved new drug application is required for marketing it. The new drug applications listed above represent ANDA's conditionally approved under the temporary exemption that allowed these products to be marketed while effectiveness studies were conducted. None of these applications is approved on the basis of effectiveness of the drug product. Therefore, supplemental new drug applications are now required to revise the labeling and to provide additional information necessary for full approval of the ANDA's on the basis of effectiveness, as well as safety.

In addition to the holders of the applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above).

Conditions for Approval and Marketing

FDA has reviewed all available evidence and concludes that single-entity nitroglycerin in buccal controlled-release tablet form is effective for the indications in the labeling conditions below. The agency is prepared to approve abbreviated new drug applications for products containing nitroglycerin in this dosage form and supplements to conditionally approved abbreviated new drug applications under the conditions described in this notice.

A. *Form of drug.* The drug is in controlled-release tablet form suitable for transmucosal administration.

B. **Labeling conditions.** 1. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

2. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The general outline of the labeling is set forth below; the labeling should be considered a guideline, to be adjusted to reflect individual product differences:

Product Name (Nitroglycerin) Package Insert

Description

Nitroglycerin, an organic nitrate, is a vasodilator which has effects on both arteries and veins. [Product Name] buccal tablets is a controlled-release nitroglycerin preparation, formulated in an inert polymer base, which delivers nitroglycerin through the oral mucosa over a sustained period of time. The [Product Name] buccal tablet, when placed under the upper lip or in the buccal pouch, adheres to the mucosa. As the tablet gradually dissolves it releases nitroglycerin to the systemic circulation over a 3 to 5 hour period.

The chemical name for nitroglycerin is 1,2,3,-Propanetriol, trinitrate. The compound has a molecular weight of 227.09. The chemical structure is: (To be inserted by manufacturer or distributor)

Clinical Pharmacology

The principal pharmacological action of nitroglycerin is relaxation of vascular smooth muscle, producing a vasodilator effect on both peripheral arteries and veins with more prominent effects on the latter. Dilation of the post-capillary vessels, including large veins, promotes peripheral pooling of blood and decreases venous return to the heart, thereby reducing left ventricular end-diastolic pressure (pre-load). Arteriolar relaxation reduces systemic vascular resistance and arterial pressure (after-load).

The mechanism by which nitroglycerin relieves angina pectoris is not fully understood. Myocardial oxygen consumption or demand (as measured by the pressure-rate product, tension-time index and stroke work index) for a given level of external exercise is decreased by both the arterial and venous effects of nitroglycerin and, presumably, a more favorable supply-demand ratio is achieved. While the large epicardial coronary arteries are also dilated by nitroglycerin, the extent to which this action contributes to relief of exertional angina is unclear.

Nitroglycerin is rapidly metabolized, principally by a liver reductase to form glycerol nitrate metabolites and inorganic nitrate. Two active major metabolites, the 1, 2 and 1, 3 dinitroglyicerols, the products of hydrolysis, appear to be less potent than nitroglycerin as vasodilators but have longer plasma half-lives. The dinitrates are further metabolized to mononitrates (biologically inactive with respect to cardiovascular effects) and ultimately glycerol and carbon dioxide. There is extensive first-pass deactivation by the liver of swallowed nitroglycerin following gastrointestinal absorption.

Adequate studies defining the pharmacokinetics of [Product Name] have not been reported. The clinical relevance of nitroglycerin blood levels has not been established, since therapeutic levels of the drug and metabolites have not been defined.

Therapeutic doses of buccal nitroglycerin have been shown to reduce systolic and mean arterial blood pressures for up to two hours, and pressure is most reduced when the patient assumes upright posture. The fall in blood pressure is seen 1–2 minutes after buccal administration. Buccal nitroglycerin may reduce abnormally elevated left ventricular end-diastolic pressure (LVEDP), a hemodynamic occurrence during acute episodes of angina pectoris and this effect can be seen about one minute after dosing.

Pulmonary artery pressures can be reduced for up to 3 hours.

Indications and Usage

[Product Name] is indicated for the treatment and prevention of angina pectoris due to coronary artery disease. Controlled clinical trials have demonstrated that single doses of this form of nitroglycerin are effective in improving exercise tolerance in patients with exertional angina pectoris. Double-blind, placebo-controlled trials have shown significant improvement in bicycle exercise time until chest pain for 3–4 hours after administration of titrated doses (1–5 mg; to give 10 mmHg drop in resting systolic blood pressure or a 10 beat/min increase in heart rate) of buccal nitroglycerin. Duration of anti-anginal effect relates directly to time to tablet dissolution. A significant anti-anginal effect can persist for about 5 hours in patients in whom the tablet has not completely dissolved by this time.

Because of the relatively rapid absorption of nitroglycerin from the oral mucosa, [Product Name] may be used for acute prophylaxis, by administration a few minutes before situations likely to provoke anginal attacks.

Controlled clinical trials have shown that therapeutically equivalent doses of buccal nitroglycerin and sublingual nitroglycerin produce similar hemodynamic effects in angina pectoris patients during the first 3 minutes after dosing. [Product Name] may therefore be tried for aborting an acute attack of angina pectoris.

Contraindications

Nitroglycerin is contraindicated in patients who have shown purported hypersensitivity or idiosyncracy to it or other nitrates or nitrites.

Warnings

Benefits of [Product Name] during the early days of acute myocardial infarction have not been established. If one elects to use nitrates in early infarction, careful clinical assessment and hemodynamic monitoring should be instituted because of the potential deleterious effects of hypotension.

Precautions

General

Severe hypotensive response, particularly with upright posture, may occur even with small doses of nitroglycerin. The drug therefore should be used with caution in subjects who may have volume depletion from diuretic therapy or in patients who have low systolic blood pressure (e.g., below 90 mm Hg). Paradoxical bradycardia and increased angina pectoris may accompany nitroglycerin-induced hypotension.

Nitrate therapy may aggravate the angina caused by hypertrophic cardiomyopathy.

Tolerance to this drug and cross-tolerance to other nitrates and nitrites may occur. Tolerance to the vascular and antianginal effects of nitrates has been demonstrated in clinical trials, in experience through occupational exposure, and in isolated tissue experiments. The importance of tolerance to the appropriate use of buccal nitroglycerin in the management of patients with angina pectoris has not been determined. In controlled clinical trials in angina pectortis patients, sustained therapy with some nitrate preparations has resulted in significantly less improvement and shorter duration of improvement in exercise time than has been seen when therapy was initiated. However, a controlled study of 2 weeks of repetitive doses of buccal nitroglycerin showed no significant tolerance as measured by treadmill performance.

In industrial workers continuously exposed to nitroglycerin, tolerance clearly occurs. Moreover, physical dependence also occurs since chest pain, acute myocardial infraction, and even sudden death have occurred during temporary withdrawal of nitroglycerin from the workers. In clinical trials in angina patients, there are reports of angina attacks being more easily provoked and of rebound in the hemodynamic effects soon after nitrate withdrawal. The relative importance of these observations to the routine, clinical use of [Product Name] is not known, but it seems prudent to gradually withdraw patients from nitroglycerin when the therapy is being terminated, rather than stopping the drug abruptly.

Information for Patients

[Product Name] should be placed under the upper lip or in a buccal pouch and permitted to dissolve slowly over a 3–5 hours period. It should not be chewed or swallowed. The tablet should not be placed under the tongue. [Product Name] beings to release medication immediately upon contact with the mucosa and will continue to release nitroglycerin until it dissolves. The time to dissolution of [Product Name] increases as patients familiarize themselves with its presence. The rate of dissolution of the tablet may be increased by touching the tablet with the tongue or drinking hot liquids.

Headache may occur during initial therapy with nitroglycerin. Headache is usually relieved by the use of standard remedies, or by lowering the dose, and tends to disappear after the first week or two of use.

Drug Interactions

Alcohol may enhance sensitivity to the hypotensive effects of nitrates. Nitroglycerin acts directly on vascular muscle. Therefore any other agent that directly or indirectly acts on vascular smooth muscle can be expected to have decreased or increased effect depending upon the agent.

Marked symptomatic, orthostatic hypotension has been reported when calcnim channel blockers and organic nitrates were used in combination. Dose adjustments of either class of agents may be necessary.

Carcinogenesis, Mutagenesis, Impairment of Fertility

No long-term studies in animals have been performed to evaluate carcinogenic potential of [Product Name]; neither has its mutagenic potential been studied. It is also not known whether nitroglycerin can affect reproduction capacity.

Pregnancy

Pregnancy Category C. Animal reproduction studies have not been conducted with [Product Name]. It is also not known whether nitroglycerin can cause fetal harm when administered to a pregnant woman. Nitroglycerin should be given to a pregnant woman only if clearly needed.

Nursing Mothers

It is not known whether nitroglycerin is excreted in human milk. Because many drugs are excreted in human milk, caution should be exercised when [Product Name] is administered to a nursing woman.

Pediatric Use

Safety and effectiveness in children have not been established.

Adverse Reactions

Adverse reactions to [Product Name], particularly headache and hypotension, are generally dose-related. In clinical trials at various doses of nitroglycerin, the following adverse effects have been observed:

Headache, which may be severe and persistent, is the most commonly reported side effect of nitroglycerin, with an incidence in the order of 50% in some studies. Cutaneous vasodilation with flushing may occur. Transient episodes of dizziness and weakness, as well as other signs of cerebral ischemia associated with postural hypotension may occasionally develop. An occasional individual may exhibit marked sensitivity to the hypotensive effects of nitrates and severe responses (nausea, vomiting, weakness, restlessness, pallor, persipiration, and collapse) may occur even with therapeutic doses of nitrates. Drug rash and/or exfoliative dermatitis have been reported in patients receiving nitrate therapy. Nausea and vomiting can occur, but appear to be uncommon. Clinical trials of one to several months duration have not shown evidence of significant injury to the oral mucosa with repetitive use of [Product Name].

Overdosage

Signs and symptoms

Nitrate overdosage may result in: severe hypotension, persistent throbbing headache, vertigo, palpitation, visual disturbance, flushing and perspiring skin (later becoming cold and cyanotic), nausea and vomiting (possibly with colic and even bloody diarrhea), syncope (especially in the upright posture), methemoglobinemia with cyanosis and anorexia, initial hpernea, dyspnea and slow breathing, slow pulse (dicrotic and intermittent), haert block, increased intracranial pressure with cerebral symptoms of confusion and moderate fever paralysis and coma followed by clonic convulsions and possibly death due to circulatory collapse.

Treatment of Overdosage

Remove any residue of the buccal [Product Name] tablet and wipe the gum clean at the site of insertion. Keep the patient recumbent in a shock position and comfortably warm. Gastric lavage may be of use if the medication has only recently been swallowed. Passive movement of the extremities may aid venous return. Administer oxygen and artificial ventilation if necessary. If methemoglobinemia is present, administration of methylene blue [1%

solution), 1–2 mg/kg intraveonously, may be required.

Methemoglobin

Case reports of clinically significant methemoglobinemia are rare at conventional doses of organic nitrates. The formation of methemoglobin is dose-related and in the case of genetic abnormalities of hemoglobin that favor methemoglobin formation, even conventional doses of organic nitrates could produce harmful concentrations of methemoglobin.

Warnings

Epinephrine is ineffective in reversing the severe hypotensive events associated with overdose. It and related compounds are contraindicated in this situation.

Dosage and Administration

The usual starting dose for [Product Name] is 1.0 mg placed on the oral mucosa between the lip and gum above the upper incisors or between the cheek and gum. The tablet should be allowed to dissolve undisturbed. [Product Name] should be incrementally titrated upward until a dose effective in controlling angina is determined or until side effects limit the does. In ambulatory patients the magnitude of incremental dose should be guided by measurements of standing blood pressure. In the event [Product Name] does not afford prompt relief of an acute anginal attack, sublingual nitroglycerin is recommended.

The interval between doses of [Product Name] for prophylactic therapy in angina pectoris is generally 3 to 5 hours. The physical presence of the tablet, as it dissolves, may serve as an indicator of continued nitrate coverage. Bedtime usage of [Product Name] is not recommended because of the risk of aspiration.

It is recommended that for prophylaxis of angina attacks, patients be started on 1.0 mg [Product Name] every 5 hours (e.g., 8 a.m., 1 p.m., and 6 p.m.), during waking hours, and their response to treatment assessed over the following 4 to 5 days. If angina occurs while the tablet is in place, the dosage should be increased to the next tablet strength. If angina occurs after the tablet has dissolved, the frequency of dosing should be increased (e.g., every 4 hours).

Clinical experience indicates that patients are able to talk, eat, and drink while using [Product Name]. Hot drinks may increase the rate of dissolution of the tablet. A single controlled clinical trial demonstrating the effectiveness of maintenance therapy with [Product Name] for 2 weeks has been reported.

How Supplied

[To be inserted by manufacturer or distributor]

C. *Marketing status.* 1. Marketing a drug product that is now the subject of a conditionally approved abbreviated new drug application may be continued provided that, on or before September 3, 1985, the holder of the application has submitted a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted (21 CFR 314.70(b)(3)).

2. In addition, to permit full approval on the basis of effectivness, as well as safety, of the abbreviated applications that are now conditionally approved on the basis of safety only, the holder of each such application is required to supplement its application to provide acceptable in vitro dissolution tests and in vivo bioavailability/bioequivalence (measuring plasma or serum concentrations of parent compound and its principal metabolites) studies on the drug product in accord with item D below. To furnish adequate time for review, bioavailability data should be submitted on or before January 2, 1986. For any application not fully approved by June 30, 1986, the agency will begin proceedings to withdraw the previous approval based only on safety and to remove those products from the market.

3. Approval of an abbreviated new drug application (21 CFR 314.55) must be obtained before marketing such products. Such an abbreviated new drug application is required to contain evidence from in vivo bioavailability studies as described in item D below. Evidence from in vitro dissolution testing is also required. Marketing drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

D. *Bioavailability requirements.* 1. As stated in the **Federal Register** of August 23, 1977 (42 FR 42311), the provision of 21 CFR 320.22(c) waiving bioavailability data for certain drugs does not necessarily apply to drug products first announced as effective in DESI notices published after January 7, 1977. This is the first notice announcing that buccal nitroglycerin (controlled-release) is effective, and the agency has determined that because of actual or potential bioequivalence problems, it should be added to the list of drugs for which bioavailability data are not waived.

2. Under the exempting notices, manufacturers were allowed to demonstrate bioavailability via an acceptable bio-screen, e.g., the digital plethysmography (DPG) method, and, as a condition for marketing, could show only that sufficient drug had been absorbed to elicit a positive measurable indication of pharmacologic activity. At that time, sensitive methodology for determination of blood levels of the various organic nitrate coronary vasodilators had not been fully developed. Suitable methodology is now available for assessing bioavailability and defining the pharmacokinetics of nitroglycerin through blood level determinations.

3. Studies are currently under way that are intended to establish the absolute and relative bioavailability of buccal nitroglycerin. The products used in these studies have been selected as standards because acceptable clinical efficacy data are available for them. Manufacturers who submit new applications or who hold previously approved or conditionally approved applications for other formulations will be required to match these standards by performing bioavailability/bioequivalence studies (blood level versus time for parent drug and major metabolites). Failure of a product to match the standards may require clinical dose ranging studies as a condition for marketing. Requests for guidance on conducting dissolution tests and bioavailability/bioequivalence studies are to be addressed to the Division of Biopharmaceutics at the address given above.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: June 27, 1985.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 85–19970 Filed 7–3–85; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC-231-NR]

Medicare Program; Exclusion of Cytotoxic Leukocyte Testing From Medicare Coverage

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of ruling.

SUMMARY: This ruling announces that cytotoxic leukocyte testing for food allergies is excluded from Medicare coverage because available evidence does not show that these tests are safe and effective.

FOR FURTHER INFORMATION CONTACT: Mary Louise McIntyre (301–594–8719).

SUPPLEMENTARY INFORMATION:

I. Background

On August 19, 1983, we published a notice in the **Federal Register** (48 FR 37716) proposing to exclude certain food

allergy testing and treatment procedures from Medicare coverage. The procedures we proposed to exclude were the cytotoxic leukocyte test, sublingual, intracutaneous and subcutaneous provocative and neutralization testing, and neutralization therapy. We based these proposed exclusions on information received from the Public Health Service (PHS).

The PHS had recommended that these procedures not be covered by Medicare because their effectiveness had not been demonstrated by acceptable clinical evidence. The complete National Center for Health Care Technology (NCHCT) evaluations and recommendations were provided as appendices to our proposed notice.

Section 1862(a)(1) of the Social Security Act (the Act) prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member". HCFA has interpreted this statutory provision to exclude from Medicare coverage those medical and health care services and items that are not demonstrated to be safe and effective by acceptable clinical evidence. We proposed to exclude the procedures listed in our August 19, 1983 notice from Medicare coverage under the authority of section 1862(a)(1) of the Act.

II. Discussion of Public Comments on the Proposed Notice

Over 19,000 commenters responded to our proposed notice. We received comments from individuals, physicians, medical laboratories, professional medical societies and other organizations, and members of Congress. Almost all the comments concerned whether Medicare should cover food allergy testing and treatment procedures and the effect of this decision on third party payors. Our response to these comments are discussed below:

• *Comment:* The vast majority of comments were testimonial in nature, and expressed the opinion that the food allergy testing and treatment procedures in question should not be excluded from Medicare coverage. These commenters stated that the procedures are effective in controlling allergies.

Response: While most of the comments were testimonial in nature, we also received a small body of new scientific studies and papers related to testing and treatment procedures other than cytotoxic leukocyte testing. Some of this material was presented to support a finding that the procedures in question are safe and effective and some of it was presented to support an opposite finding.

The American Academy of Otolaryngic Allergy, Inc. endorses intracutaneous and subcutaneous provocative food allergy testing techniques and neutralization therapy and has submitted studies that support its views. The Society for Clinical Ecology and the Pan-American Allergy Society also presented studies supporting the efficacy of these modalities. Conversely, the Joint Council of Allergy and Immunology finds these food allergy procedures to be unproven and has submitted studies supporting its view. The Joint Council's sponsoring organizations are the American Academy of Allergy and Immunology, the American College of Allergists, the American Association for Clinical Immunology and Allergy, and the American Association of Certified Allergists. Due to the complexity of the issues involved and the lack of consensus in the medical community, we are still evaluating this new material and its implications for sublingual, intracutaneous and subcutaneous provocative and neutralization tests, and neutralization therapy.

Out of the more than 19,000 commenters, approximately 170 specifically mentioned cytotoxic leukocyte testing. These commenters oppose the elimination of Medicare coverage for this procedure. Their opposition is testimonial in nature and included no scientific studies supporting the efficacy of cytotoxic leukocyte testing for food allergy. Further, the Food and Drug Administration (on page 2 of its Compliance Policy Guide 7124.27 dated 03/19/85) states that the consensus of scientific opinion is that the cytotoxic test is unreliable as a diagnostic tool and is not generally recognized by qualified experts as effective.

Therefore, based on all information available to us, we have determined that cytotoxic leukocyte testing lacks an acceptable scientific rationale, specificity, sensitivity, and evidence of clinical effectiveness. We see no reason to revise our position on this particular procedure.

• *Comment:* Many commenters are concerned that private insurance companies will follow Medicare's lead and also exclude food allergy testing and treatment procedures from coverage. These commenters believe that affected individuals will not be able to afford the treatments on their own. They stated that without the treatments, many individuals will not be able to hold steady employment and will be forced to apply for disability under the Social Security program.

Response: The majority of individuals commenting on our proposed notice appear to be individuals who are not entitled to Medicare benefits and who have private insurance policies that currently over the food allergy tests and treatments in question. We could identify only 210 commenters as current Medicare beneficiaries based on the background information and other statements provided in the individual letters that we received. While we recognize that private health insurers sometimes adopt policies similar to those of Medicare, we have no legal control over the coverage provided by private insurers. Medicare policies are applicable only to the Medicare program and have no statutory or regulatory relationship to private insurers and third party payors.

Comment: One commenter stated that we had ignored the requirements of the Regulatory Flexibility Act.

Response: This is not a final rule required to be published under section 5 U.S.C. 553; rather, it is an agency general statement of policy or interpretation. Therefore, the Regulatory Flexibility Act does not apply.

III. Determinations

• We have determined that available evidence does not show that cytotoxic leukocyte testing for food allergies is safe and effective. Therefore, we are excluding this procedure from Medicare coverage.

• We are still evaluating information concerning sublingual, intracutaneous and subcutaneous provocative and neutralization tests, and neutralization therapy for food allergies. We will publish a notice in the **Federal Register** when our evaluation is completed.

IV. Ruling

We plan to compile and publish all HCFA Rulings in the "Health Care Financing Administration Rulings" Booklet which will be indexed for citation purposes. When this ruling is republished in the booklet, it will be known as HCFAR–85–1. The test of the ruling is as follows:

Exclusion of Cytotoxic Leukocyte Testing From Medicare Coverage
HCFAR–85–1

Purpose: This ruling announces HCFA's decision to exclude Medicare coverage of cytotoxic leukocyte testing for food allergies.

Citations: Section 1862(a)(1) of the Social Security Act, 42 U.S.C.

1395y(a)(1); 42 CFR 401.108; 42 CFR 405.310(k).

Pertinent History: We published a notice in the Federal Register on August 19, 1983 (48 FR 37716) proposing to exclude certain food allergy testing and treatment procedures from Medicare coverage. We received more than 19,000 comments on the notice, approximately 170 specifically mentioned cytotoxic leukocyte testing. These commenters oppose the elimination of Medicare coverage for this procedure. Their opposition is testimonial in nature and included no scientific studies supporting the efficacy of cytotoxic leukocyte testing for food allergies. Further, the Food and Drug Administration (on page 2 of its Compliance Policy Guide 7124.27 dated 03/19/85) states that the consensus of scientific opinion is that the cytotoxic test is unreliable as a diagnostic tool and is not generally recognized by qualified experts as effective. Therefore, based on all information available to us, we have determined that cytotoxic leukocyte testing lacks an acceptable scientific rationale, specificity, sensitivity, and evidence of clinical effectiveness.

Ruling: Cytotoxic leukocyte testing for food allergies is excluded from Medicare coverage because available evidence does not show that these tests are safe and effective.

Effective Date: August 5, 1985.

Cross-References: Identical instructions can be found in the following HCFA publications: Part A Intermediary Manual (HCFA Pub. 13-3), Chapter II, Coverage Issues Appendix, section 50-2; Medicare Carriers Manual (HCFA Pub. 14-3), Chapter II, Coverage Issues Appendix, section 50-2; Hospital Manual (HCFA Pub. 10), Coverage Issues Appendix, section 50-2.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 13, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-16080 Filed 7-3-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising five notices describing systems of records maintained by the Geological Survey. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the Federal Register.

The notice titled "Accounts Receivable—Interior, GS-3", previously published in the Federal Register on October 12, 1983 (48 FR 46450), is being revised to delete references to the Minerals Management Service (MMS). Such records being maintained by MMS are covered in a system of records notice (MMS-8) published in the Federal Register on August 1, 1984 (49 FR 30800).

The notice titled "Contract Files—Interior, GS-5", previously published on June 23, 1983 (48 FR 28747), is being revised to correct a typographical error in the description of the categories of individuals covered by the system. Also, existing routine use (6) dealing with disclosures to consumer reporting agencies is being removed from the "routine use" section of the notice, and is being published separately as prescribed in guidelines issued by the Office of Management and Budget (OMB) on March 30, 1983, July 5, 1983, and July 22, 1983, pertaining to the Debt Collection Act of 1982 (P.L. 97-365).

The notice titled "RELOS Records—Interior, GS-6", previously published on April 11, 1977 (42 FR 19056), is revised to remove references to carpool information, and to correct the entries concerning notification, access, and amendment procedures.

The notice titled "Cartographic Information Customer Records—Interior, GS-15", previously published on June 23, 1983 (48 FR 28748), is revised to reflect that the records are stored by account number, and indexed by name and zip code. The existing routine use (4) dealing with disclosures to consumer reporting agencies is being removed from the "routine use" section of the notice, and is being published separately as prescribed in the OMB guidelines referenced above.

The notice titled "Computer Services Users—Interior, GS-18", previously published on June 23, 1983 (48 FR 28749), is revised to reflect that the records are stored on magnetic disks. The existing routine use (6) dealing with disclosures to consumer reporting agencies is being removed from the "routine use" section of the notice, and is being published separately as prescribed in the OMB guidelines referenced above.

The five revised notices are published in their entirety below, and are effective July 5, 1985.

Dated: June 21, 1985.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/USGS-3

SYSTEM NAME:

Accounts Receivable-Interior, GS-3.

SYSTEM LOCATION:

Geological Survey, National Center, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Debtors owing money to the Geological Survey, including employees, former employees, business firms, institutions and private individuals. (The records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships. Some of the records in the system which pertain to individuals may reflect personal information, however. Only the records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, SSN, ID number, amount owed, invoice or bill number, reason for the debt, and any other information on debts owed to the Bureaus.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701-09; FPMR 101-7; Treasury Fiscal Requirements Manual; Pub. L. 97-365.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to bill persons and firms owing money to the Geological Survey. Disclosures outside the Department of the Interior may be made to: (1) The Office of Personnel Management for reporting purposes; (2) to the U.S. Department of Justice when related to litigation or anticipated litigation; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual;

(5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit; (6) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual form in file folders.

RETRIEVABILITY:

By individual name and Social Security number.

SAFEGUARDS:

Handling by authorized personnel only.

RETENTION AND DISPOSAL:

Retained until payment received and account audited, then disposed of in accordance with Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Financial Management, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

A written and signed request from the requester seeking information about him/her is required and is submitted to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the System Manager and must meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Petitions for amendment should be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject individual, contracting officer, accounting records.

INTERIOR/USGS-5

SYSTEM NAME:

Contract Files-Interior, GS-5.

SYSTEM LOCATION:

The primary location of this system of records is in the Branch of Procurement and Contracts, Geological Survey, National Center, Reston, VA 22092. These records are also maintained in several Survey administrative field offices. A listing of these locations may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contracts with the Geogogical Survey. (The records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships. Some of the records in the system which pertain to individuals may reflect personal information, however. Only the records reflecting personal information are subject to the privacy Act. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of contract information, from inception of requirement, through contract award, contract administration and completion of the contract. Copies of contractor and technical and cost proposals, documentation pertaining to the award, contract, miscellaneous correspondence, and information on debts owned by a contractor as a result of overpayment, default, disallowed costs or other contractual obligation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 481.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is in awarding and administering contracts through their completion. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee; or the issuance ofa security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

By name of individual contractor and by contract number.

SAFEGUARDS:

Proprietary technical and cost information maintained separately in locked cabinet.

RETENTION AND DISPOSAL:

Retained and disposed of according to GSA General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Procurement Policy Section, Branch of Procurement and Contracts, Geological Survey, Department of the Interior, National Center, Reston, VA 22092.

NOTIFICATION PROCEDURES:

A written and signed request stating that the requester seeks information concerning records pertaining to him must be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access shall be addressed to the System Manager, signed by the requester and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information comes from the individual contractor.

INTERIOR/USGS-6

SYSTEM NAME:

RELOS Records—Interior, GS-6.

SYSTEM LOCATION:

Branch of Administrative Services, Geological Survey, National Center, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Survey employees in the Washington Metropolitan Area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individual employees, social security numbers, office telephones, location codes, room numbers, mail stop numbers, organization codes, parking permit numbers, names of individuals who qualify for preferential parking due to handicap or position.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3101, 40 U.S.C. 483(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of these records are: (a) To prepare the bureau telephone directories; (b) to issue parking permits; (c) to prepare space occupancy reports. Disclosure outside the Department of the Interior may be made: (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual and computerized form.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

Records kept in locked cabinets for use of Branch of Administrative Services personnel only.

RETENTION AND DISPOSAL:

Retained until obsolete, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Administrative Services, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the individual seeks information concerning his/her records is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

INTERIOR/USGS-15

SYSTEM NAME:

Cartographic Information Customer Records-Interior, GS-15.

SYSTEM LOCATION:

(1) National Cartographic Information Center (NCIC), National Mapping Division, Geological Survey, Reston, VA 22092. (2) NCIC Field Offices (for specific locations contact the System Manager.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested Cartographic Information directly from, or whose requests have been forwarded to the National Cartographic Information Center or its sponsored field centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address, customer's inquiry, response to inquiry, appropriate accounting entries, and information on debts owed the Bureau as a result of customer orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Executive Order 3206. (2) OMB Circular A-16. (3) 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for reference by Survey and Survey contract employees in processing customer inquiries, orders, and complaints. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license; to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders, correspondence recorded on microfilm and key information recorded on magnetic tape in some instances.

RETRIEVABILITY:

Stored by account number, indexed by name and zip code.

SAFEGUARDS:

Maintained in GS areas occupied by GS personnel during working hours with building locked and/or guarded during off hours.

RETENTION AND DISPOSAL:

Original hard copy destroyed after three years or sooner if recorded on

microfilm. Indexes and microfilm maintained at least three years (longer if useful to operations or if active).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, National Cartographic Information Center (NCIC), National Mapping Division, GS, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Customers on whom record is maintained and GS or GS contract information researchers.

INTERIOR/USGS-18

SYSTEM NAME:

Computer Services Users—Interior, GS-18.

SYSTEM LOCATION:

U.S. Geological Survey, Information Systems Division, National Center, Mail Stop 801, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Computer Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, computer user number, work location, and information on debts owed to the Bureau as a result of computer services billed to users or customers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTANED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To bill computer users; (b) to mail information to computer users. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk.

RETRIEVABILITY:

By individual user's name.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are periodically updated and obsolete records are deleted from magnetic disks.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Division, U.S. Geological Survey, Mail Stop 801, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual users of computer services.

[FR Doc. 85-16011 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Indian Affairs

Duckwater Shoshone Tribe, Nevada; Ordinance Providing for the Introduction, and Use of Alcohol

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Duckwater Shoshone Tribal Council duly adopted Ordinance 85-D-06 on March 29, 1985. The ordinance provides for the introduction and use of alcohol within the areas of Indian country under the jurisdiction of the Duckwater Shoshone Tribe. The ordinance reads as follows:

Sidney L. Mills,

Acting Deputy Assistant Secretary—Indian Affairs.

Ordinance of the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada

Ordinance No: 85-D-06

Ordinance To Establish the Duckwater shoshone Tribal Liquor Ordinance

Be It Enacted By the Duckwater Tribal Council:

Whereas, under the Tribal Constitution, the Duckwater Shoshone Tribal Council is charged with the responsibility for the promotion of the welfare of the tribal membership; and

Whereas, the Duckwater Shoshone Tribe is hereby authorized under Article VI, section I (f) of the Duckwater Shoshone Constitution and Article II, section I of the By-laws to adopt this ordinance; and

Whereas, the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, makes the Federal Indian Liquor Laws inapplicable to; any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State of Nevada in which such act or transaction occurs and with an ordinance duly adopted by the Tribe having jurisdiction over such area of Indian country; certified by the Secretary of the Interior and published in the Federal Register.

Now Therefore Be It Enacted and Ordained, that the introduction and possession of intoxicating beverages shall be lawful within Indian country

under the jurisdiction of the Duckwater Shoshone Tribe, provided, that;

Section 1. Conformity with Laws of Nevada within their Respective Geographic Boundaries.

That such introduction and possession are in conformity with both laws of the State of Nevada and this ordinance.

Section 2. Sale of Intoxicating Beverages.

No person shall engage in the sale of intoxicating beverages within the Indian country under the jurisdiction of the Duckwater Shoshone Tribe.

Section 3. Possession of Intoxicating Beverages.

(a) The possession of an intoxicating beverage will be disallowed on special days and or activities as designated by the Duckwater Shoshone Tribe, including but not limited to: Spiritual gatherings and elections.

(b) Possession of intoxicating beverages will only be allowed in the homes of private individuals and not in the general public of the Duckwater Shoshone Tribe. Boundaries for the private individuals will be within Eleven Hundred Feet from the homes.

(c) Intoxicating beverages may be allowed in specified areas of the general public on special occasions, enacted by Tribal Resolutions.

(d) Transportation of intoxicating beverages will be allowed only when said beverages are unopened.

Section 4. It shall be unlawful for any person to furnish any alcoholic beverage to any person under the age of twenty-one (21) years or to leave or to deposit any alcoholic beverages with the intent that the alcoholic beverages shall be procured by any person under the age of twenty-one (21) years.

Section 5. Any Indian who violates any of the provisions of the ordinance shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine of not more than $300.00 or by imprisonment of not more than sixty (60) days or both such fine and imprisonment: Provided, however, that any person under the age of eighteen (18) years may, in the discretion of the judge, be treated as a juvenile and have the charge(s) disposed of pursuant to applicable juvenile law and procedures.

Section 6. When any provisions of this ordinance is [sic] violated by a non-Indian, he or she shall be referred to the State and/or Federal authorities for prosecution under applicable laws.

Section 7. The possession of intoxicating beverages shall be subject to patrol by the Duckwater Tribal Police, for the purpose of enforcing tribal laws, and by State and County Officers for the purposes of enforcing State laws and against non-Indians.

Section 8. All prior Tribal Ordinances relating to intoxicating beverages by the Duckwater Shoshone Tribe are hereby repealed.

Ceritification

The undersigned, as Chairman and Secretary of the Duckwater Tribal Council, do hereby certify that the Duckwater Tribal Council is composed of five (5) members of whom 5 were present at a Special meeting held on the 29th day of March, 1985; and the foregoing tribal governing ordinance was duly adopted by a vote of 5 For, 0 Against and 0 Abstention.

Jerry Millette,

Chairman, Duckwater Tribal Council.

Attest:

Perline Thompson,

Secretary, Duckwater Tribal Council.

[FR Doc. 85-15980 Filed 7-3-85; 8:45am]

BILLING CODE 4310-02-M

Crow Indian Irrigation Project, MT; Annual Operation and Maintenance Charges and Related Information

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Public notice.

SUMMARY: This notice sets forth changes to the operation and maintenance charges and related information applicable to Indian owned lands served by the Two Leggins Water Users Association.

The annual assessment rate per acre for Indian owned lands served by the Two Leggins Water Users Association will change from $5.20 to $5.70, with each Water Users paying a minimum of $20.00.

This notice does not change the other per acre assessments of $10.50 for all regularly presently assessed lands, the $0.30 for the presently assessed lands served by the Willow Creek Storage Facilities, the $2.20 for all Indian owned lands served by the Bozeman Trail Ditch Company, and the $1.20 for all Indian owned lands served by the Two Leggins Drainage Association.

EFFECTIVE DATE: This notice shall become effective when published and remain in effect until changed by public notice.

FOR FURTHER INFORMATION CONTACT: Walter R. Egged, Bureau of Indian Affairs, Crow Indian Agency, MT. 59022; telephone number: (406) 638-2671, ext. 112.

SUPPLEMENTARY INFORMATION: This notice issued pursuant to 25 CFR 171.1 under authority delegated to the Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior in 209 DM 8. This authority is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 385. The current operation and maintenance changes were established by notice published in the **Federal Register** (50 FR 7661).

At the annual meeting of the Two Leggins Water User's Association, held on Saturday, February 9th, 1985, at Hardin MT, the Water Users, by unanimous vote, elected to raise the current operation and maintenance rate to $5.50 per acre for each presently assessed acre. The Crow Irrigation Project administrates the Indian owned lands served by the Two Leggins Water User's Association, therefore inconjunction with the above raise annual assessment of Indian owned lands was set at $5.70 per acre, with $0.20 acre being assessed for an administrative fee.

The minimum fee of $20.00 for each Water Users will remain in affect as in previous years. This annual operation and maintenance charges on Indian owned presently assessed land will be for calender year 1985 and subsequent years until further notice. This notice does not change the per acre assessment on the regularly presently assessed lands and those served by Willow Creek Storage Facilities as well as the Indian owned lands served by the Two Leggins Drainage Association and the Bozeman Trail Ditch Company.

This notice also does not change any assessment or collect date, any penalties or any other related items other than those listed above.

Norris M. Cole,

Acting Area Director.

[FR Doc. 85-16074 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[N-42005]

Realty Action; Non-Competitive Lease/Sale of Public Land; Nevada

The following described land in the City of Las Vegas, Clark County, Nevada, has been determined to be suitable for disposal by sale pursuant to Pub. L. 96-586 and/or lease pursuant to section 302 of the Federal Land Policy and Management Act (90 Stat. 2762; 43 U.S.C. 1732) at not less than fair market value. The lands will not be offered for

sale and/or lease until 60 days after the date of this notice.

Mount Diablo Meridian

T. 20 S., R. 60 E.,
Sec. 15, NE¼NE¼, NW¼NE¼, SW¼NE¼, W½NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, E½SE¼NE¼, SW¼SE¼SE¼NE¼, S½N½N½SW¼, S½N½SW¼, N½SW¼SW¼, SE¼SW¼SW¼, N½SW¼SW¼SW¼, SE¼SW¼, N½SE¼, N½S½SE¼, W½SW¼SW¼SE¼, N½S½SE¼SE¼, SE¼SW¼SE¼SE¼, SW¼SE¼SE¼SE¼.

Comprising 430 acres (gross).

This notice supercedes and amends the notice of June 13, 1984 (published in FR/Vol 49, No. 121/June 21, 1984) in so far as the above described land is concerned. The land is inititally being offered as a direct sale and/or lease to the City of Las Vegas. The City of Las Vegas has identified a need to diversify the economic base of the area as the economy of southern Nevada has historically been predicated upon the tourist industry. In order to obtain this diversification, the City proposes to develop a high-tech industrial park along with other compatible uses. Currently, there is no such high-tech park in southern Nevada and an interest has been expressed by high-tech firms to locate in Las Vegas. The size and location of this parcel within the infrastructure of Las Vegas makes it uniquely suited to accommodate such a use. There is no private land in the vicinity with similar characteristics. The direct sale and/or lease of the parcel to the City of Las Vegas would provide for the orderly development of a high-tech park and would be of a great economic benefit to the community. The direct sale of this parcel would be in the public interest.

The land has not been used and is not required for any federal purpose. The sale is consistent with the Bureau's planning system.

In the event of a sale, conveyance of the available mineral interest will occur simultaneously with the sale of the land. The mineral intersts being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will consitute and application for conveyance of those mineral interests. The City of Las Vegas will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interest.

Patent and/or lease when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All oil and gas, sodium and potassium leaseable mineral depoits shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Las Vegas District Office, 4765 Vegas Drive P.O. Box 26569, Las Vegas, NV 89126.

And will be subject to:

1. Those rights for powerline purposes which have been granted to Nevada Power Company, it successors or assigns, by Permit No. Nev-043546, under the Act of February 15, 1901, 31 Stat. 790.

2. Those rights for powerline purposes which have been granted to Nevada Power Company, its successors or assigns by Permit No. Nev–061618, under the Act of March 4, 1911, 36 Stat. 1253.

3. Those rights for Federal Aid Highway purposes which have been granted to the State of Nevada, Department of Transportation, its successors or assigns, by Permit No. Nev–062275, under the Act of August 27, 1958, 72 Stat. 885.

4. Those rights for powerline and telephone line purposes which have been granted to the Las Vegas, Valley Water District, its successors or assigns, by Permit No. N–17000, under Public Law 83–666, 68 Stat. 864.

5. An easement for streets, roads and utilities in accordance with the transportation plan for the City of Las Vegas.

If the City of Las Vegas chooses not to proceed with a non-competitive lease and/or sale, the land may be sold utilizing competitive bidding procedures. Specific sale information and procedures will be made available to the pubic prior to the sale.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126–0569. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer consummation of the sale would not be fully consistent with FLPMA, Pub. L. 96–586 or other applicable laws.

Dated: June 25, 1985.

William C. Calkins,

Acting District Manager.

[FR Doc. 85–15974 Filed 7–3–85; 8:45 am]

BILLING CODE 4310-HC-M

[A-9272]

Sale of Public Lands; Cancellation of Realty Action; Coconino County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Notice of Realty Action—Sale, Public Lands in Coconino, County, Arizona.

SUMMARY: On April 25, 1985, the following public land was offered for sale pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act in Volume 50, Number 80, page 16359 of the **Federal Register**:

Gila and Salt River Meridian, Coconino County, Arizona

T. 27 N., R. 9 E.,
Sec. 6, lots 3 thru 10, inclusive, SE¼NW¼, E½SW¼, N½SE¼, and SE¼SE¼.

Containing 463.46 acres, more or less.

During the public comment period, the State of Arizona requested that the land described above be set aside for land exchange purposes. Whereas the proposal to offer the public land for sale was by Bureau Motion and since the exchange of the public land would potentially serve the public benefit, the Notice of Realty Action, as published on April 25, 1985, is hereby cancelled.

Marlyn V. Jones,

District Manager.

Dated: June 25, 1985.

[FR Doc. 85–15990 Filed 7–3–85; 8:45 am]

BILLING CODE 4310-32-M

Clear Lake Resource Area; Realty Action; Sale of Public Land in Glenn, Colusa, Yolo and Napa Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands.

SUMMARY: The following described land has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations,

and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713). The lands are difficult and uneconomic to manage as part of the public lands, and not suitable for management by another Federal department or agency. Each parcel will be separately offered for sale on September 11, 1985, at no less then the appraised fair market value. Parcels 1, 2, 3, 5 and 6 will be offered by competitive bid, and bids must include all of the land in the parcel. Parcel 4 will be offered by direct sale to an adjacent landowner.

Publication of this notice in the **Federal Register** segregates the public lands from appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

The parcels to be offered September 11, 1985 include:

Parcel	Case No.	County	Legal description	Acres	FMV
1	CA 17006	Glenn	T. 20 N., R. 7 W., M.D.M. Sec. 2, W½SE¼, Sec. 11, NW¼NE¼	120	$42,000
2	CA 17007	Glenn	T. 18 N., R. 6 W., M.D.M. Sec. 24, SE¼NE¼	40	8,000
3	CA 17008	Colusa	T. 18 N., R. 6 W., M.D.M. Sec. 34, lots 2, 7	66.23	16,000
4	CA 17009	Yolo	T. 12 N., R. 3 W., M.D.M. Sec. 29, lot 2	2.82	1,100
5	CA 17010	Napa	T. 7 N., R. 5 W., M.D.M. Sec. 30, lot 4	12.55	25,000
6	CA 17011	Napa	T. 7 N., R. 3W., M.D.M. Sec. 1, W½ lot 2 of NE¼ Sec. 1, W½ lot 2 of NE¼	76.38	78,000

Federally owned mineral interests of *no known value* will be conveyed with the property. A bid on the property will also constitute an application for conveyance of those mineral interests being offered for conveyance in the sale.

DISPOSITION OF MINERAL INTERESTS

Parcel	Serial No.	Minerals reserved to the United States
1	CA 17006	Oil and gas and locatable minerals.
2	CA 17007	Oil and gas.
3	CA 17009	Oil and gas and salable minerals.
4	CA 17009	Oil and gas.
5	CA 17010	Locatable minerals.
6	CA 17011	Oil and gas.

Sealed bids will be accepted if received at the Ukiah District Office, 555 Leslie Street, (P.O. Box 940), Ukiah, California 95482 prior to 10:00 a.m. on Wednesday, September 11, 1985. The sealed bids will be opened and publicly declared at the Ukiah District Office Conference Room on September 11, 1985 beginning at 10:00 a.m. All unsold parcels will be reoffered competitively by sealed bid on November 13, 1985 at the same time and place.

If the parcels remain unsold after the November 13, 1985 date, they will again be offered for sale by sealed bid at the same time on the third Wednesday of each month thereafter until the parcels are sold or until September 11, 1986.

Each sealed bid shall be accompanied by certified check, postal money order, bank draft, or cashier's check made payable to the Department of Interior-BLM for no less than 20 percent of the bid price (43 CFR 2711.3–1(d)) plus the $50.00 filing fee for mineral conveyance (43 CFR 2720.1–2(c)). Failure to deposit this $50.00 (nonrefundable to the declared high bidder) filing fee will result in disqualification as the high bidder. The sealed bid envelopes must be marked on the front lower left corner "Clear Lake Resource Area, September 1985, Land Sale, Parcel Number ———." If two or more qualified sealed bids for the same amount are received, then the apparent successful bidder will be determined by drawing.

The successful bidder shall submit the remainder of the full purchase price within 180 days of the sale date. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited.

All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany bids. Upon disqualification of an apparent bidder, the next high bid will be honored.

The BLM will reject or accept any and all offers, or withdraw any land or interest in land from sale, if in the opinion of the Authorized Officer consummation of the sale would not be in the best interest of the United States. Availability for sale will not preclude the parcel from being considered for other actions.

Sale terms and conditions applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States (Act of August 30, 1890 (43 U.S.C. 945)).

2. The minerals specified above shall be reserved to the United States together with the right of prospect for, mine, and remove the minerals. A more detailed description incorporated in the patent document is available for review in this office.

3. Parcel 2 will be subject to those rights granted by oil and gas lease CA 9968 under the Act of February 25, 1920, as amended (41 Stat. 437; 30 U.S.C. Sec. 181).

4. Parcel 4 will be subject to those rights granted by oil and gas lease CA 9817 under the Act of February 25, 1920, as amended (41 Stat. 437; 30 U.S.C. Sec. 181).

5. A reservation for a 22 kv transmission line will be incorporated into the patent for Parcel 6.

6. The parcels may have development restrictions placed on them by the County Planning Departments. This information is outlined in the Land Reports available in the Ukiah District Office.

Detailed information concerning the sale, including the environmental assessment, land report and photographs are available for review at the Ukiah District Office, at the address indicated above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Ukiah, California 95482.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Cathie Dokken, (707) 462–3873.

Dated: June 24, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85–15976 Filed 7–3–85; 8:45 am]

BILLING CODE 4310–84–M

[M 45993-A and M 45993-B]

Opening Order; Flathead and Lincoln Counties, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Order Providing for Limited Opening of Five Public Land Islands in Flathead and Lincoln Counties, Montana.

SUMMARY: This order will open the below-described lands to the operation of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, et seq.):

Principal Meridian, Montana

M 45993-A:

T. 32 N., R. 23 W.,
Sec. 20, lots 8, 9 and 10.
Containing 1.79 acres.

M 45993-B:

T. 27 N., R. 28 W.,
Sec. 27, lots 10 and 11.
Containing 0.2 acres.

SUPPLEMENTARY INFORMATION: The three islands described in M 45993-A are located in Lower Stillwater Lake north of Whitefish, Montana. The two islands described in M 45993-B are located in Horseshoe Lake south of Libby, Montana. Since all of the islands are very small but have high recreation and wildlife values, they should be kept in public ownership to protect these values and allow for public use of them. They are also over 100 miles from any other BLM-managed land.

An application has been received from the State of Montana, Department of Fish, Wildlife and Parks, for transfer of all five islands under the Recreation and Public Purposes (R&PP) Act. The lands are currently being classified for transfer under the R&PP Act to the State of Montana.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

DATE: On January 26, 1982, a Notice of filing of plat of survey was published in the **Federal Register** (47 FR 3624), but none of the islands were opened to the operation of any public land or mining laws.

At 9 a.m. on July 29, 1985, the above-described lands will be open to the operation of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, et seq.).

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

June 26, 1985.

[FR Doc. 85-16073 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-DN-M

Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 56067(ND) Acquired, Divide County, North Dakota, was timely filed and accompanied by the required rental accuring from the date of termination, March 1, 1985.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: June 25, 1985.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 85-16072 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-85-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordiantion Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 044, Block 89, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conduced from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on June 26, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 27, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16071 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Kerr McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Kerr McGee Corporation, Unit Operator of the Ship Shoal Block 28 Federal Unit Agreement No. 14-08-001-2942, submitted on June 17, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Ship Shoal Block 28 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service

is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 27, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16070 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-MR-M

Approval of Outer Continental Shelf Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following revised Outer Continental Shelf Official Protraction Diagrams, approved on the dates indicated, are available at the Minerals Management Service, Alaska OCS Region, Anchorage, Alaska. In accordance with Title 30, Code of Federal Regulations, these protection diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic area represented.

Outer Continental Shelf Protraction Diagrams

	Description	Revised date
NN 3-1	Akutan North	May 21, 1985.
NN 3-3	Akutan	Mar. 5, 1985.

2. Copies of these diagrams are for sale at two dollars ($2.00) per sheet by the Records Manager, Minerals Management Service, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510-1159. Checks or money orders should be made payable to the Department of the Interior—Minerals Management Service.

Alan D. Powers,

Regional Director.

[FR Doc. 85-16069 Filed 7-3-85; 8:45 am]

BILLING CODE 4301-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6737, Block 97, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on June 21, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 24, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-15972 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-F-16452]

Burlington Northern, Inc.; Control Exemption; Monroe Trucking Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Burlington Northern, Inc. (BN) and Burlington Northern Motor Carriers, Inc. (BNMC) filed a petition to exempt under 49 U.S.C. 11343(e) their acquisition of control of Monroe Trucking Inc. (Monroe) from the prior approval requirements of 49 U.S.C. 11343, *et seq.*

DATE: Comments must be received by July 26, 1985.

ADDRESSES: Send comments (an original plus 10 copies) referring to Docket No. MC-F-16452 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioners' representative: Hebert J. Martin, Esq., Cromwell & Moring, 1100 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: BN is a non-carrier holding company; BNMC is a wholly-owned non-carrier subsidiary of BN. BN also owns the Burlington Northern Railroad Company (BNRR), a Class I railroad. Monroe holds contract carrier authority under Permit No. MC-154621.

BNMC and Monroe have entered into an agreement for Monroe to become a wholly-owned subsidiary of BNMC. As a result of the transaction, BN would commonly control Monroe and BNRR, requiring Commission approval under 49 U.S.C. 11343, *et seq.*

BN, BNMC and Monroe seek exemption under 49 U.S.C. 11343(e) and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: June 28, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Darlene Proctor,

Acting Secretary.

[FR Doc. 85-16037 Filed 7-3-85; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice, as required by 49 U.S.C. 10524(b)(1), that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: CMI International, Inc., 28240 Grand River, Farmington, Michigan 48024.

2. Wholly-owned subsidiaries which will participate in the operations and respective states of incorporation:

(i) CMI-Dearborn, Inc., 5353 Wilcox, Montague, Michigan 49437, a Michigan corporation

(ii) CMI-Noren, Inc., 14638 Apple Drive, Fruitport, Michigan 49415, a Michigan corporation

(iii) CMI Permanent Mold, Inc., 374 N. State Street, Sparta, Michigan 49345 and 51650 C.R. 133, Bristol, Indiana 46507, a Michigan corporation

(iv) CMI-Southfield, Inc., 19400 W. Eight Mile Road, Southfield, Michigan 48075 and 26290 W. Eight Mile Road, Southfield, Michigan 48034, a Michigan corporation

(v) CMI-Transportation, Inc., South U.S. 131, P.O. Box 336, White Pigeon, Michigan 49099, a Michigan corporation

(vi) CMI-Wabash Cast, Inc., Route 24 West, Wabash, Indiana 46992, an Indiana Corporation

(vii) Seaton SSK Engineering, Inc., 553 N. Court Street, Augres, Michigan 48703, a Michigan corporation

(viii) CMI-Engineering, Inc., 26290 W. Eight Mile Road, Southfield, Michigan 48034, a Michigan corporation

(ix) CMI-Wheels, Inc., 1870 River Forks Drive, Huntington, Indiana 46750, an Indiana Corporation

1. Parent corporation and address of principals office: Cargill, Incorporated, P.O. Box 9300, Minneapolis, Minnesota 55440

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal office and place of Incorporation:

(a) Caprock Industries, Inc., P.O. Box 948, Gruver, Texas 79040—Delaware

(b) Cargill Marine and Terminal, Inc., P.O. Box 9300, Minneapolis, Minnesota 55440—Delaware

(c) C. Tennant, Sons & Co., of New York, P.O. Box 9300, Minneapolis, Minnesota 5544—Delaware

(d) Excel Corporation, P.O. Box 2519, Wichita, Kansas 67219—Delaware
Subsidiary of Excel Corporation: (1) Excel Transportation, Inc., P.O. Box 2519 Wichita, Kansas 67219—Kansas

(e) Hohenberg Bros. Company, 266 South Front Street, Memphis, Tennessee 38101—Tennessee
Subsidiary of Hohenberg Bros. Company: (1) R.T. Hoover & Co., Inc. 817 Texas Avenue, El Paso, Texas 79999—Texas

(f) Leslie Salt Co., 7200 Central Avenue, Newark, California 94560—Delaware

(g) Mid-State Metals, Inc., 15407 McGinty Road West, Wayzata, Minnesota 55391—Illinois

(h) North Star Steel Company, 2901 Metro Drive Suite 330, Minneapolis, Minnesota 55420—Minnesota
Subsidiary of North Star Steel Company: (1) Magnimet Corporation, P.O. Box 28, Monroe, Michigan 48161—Michigan

(i) North Star Steel Texas, Inc., 465 Orleans, Beaumont, Texas 77704—Delaware

(j) Young's Inc., Rural Route 1 Roaring Spring, Pennsylvania 16673—Pennsylvania

(k) Zelrich Steel Company, Inc., P.O. Box 29667, Dallas, Texas 75229—Texas

(l) Sunny Fresh Foods, Inc., P.O., Box 5613, Minneapolis, Minnesota 55440—Delaware

1. Parent corporation and address of principal office: Davis Concrete Company, 204 West Nash, P.O. Box 1478, Grapevine, Texas 76051.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Denco Materials Inc., 204 West Nash, P.O. Box 1478, Grapevine, Texas 76051 (Texas)

(ii) Gainesville Sand and Gravel Company, 204 West Nash, P.O. Box 1478, Grapevine, Texas 76051 (Texas).

James H. Bayne,

Secretary.

[FR Doc. 85-16036 Filed 7-3-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30689]

The Chesapeake & Ohio Railway Co.; Trackage Rights; Consolidated Rail Corp.

Consolidated Rail Corporation has agreed to grant overhead trackage rights to The Chesapeake and Ohio Railway Company at Grand Rapids, MI. The trackage rights will be effective upon the Commencement Date specified in the subject Trackage Rights Agreement.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 27, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Darlene Proctor,

Acting Secretary.

[FR Doc. 85-16038 Filed 7-3-85; 8:45 am]

BILLING CODE 7035-02-M

DEPARTMENT OF LABOR

Mine Safety and Health Adminsitration

[Docket No. M-85-43-C]

Bartley & Bartley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bartley & Bartley Coal Company, P.O. Box 142, Rockhouse, Kentucky 41561 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 7 Mine (I.D. No. 15-02384), located in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 7 Mine is in the No. 1 Elkhorn seam and ranges from 40 to 48 inches in height. The coal seam has consistent ascending and descending grades creating dips in the coal bed.

3. petitioner states that the use of canopies would restrict the equipment operator's vision and damage the room supports, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1985. Copies of the petition are available for inspection at that address.

Dated: June 27, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-16084; Filed 7-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-42-C]

BethEnergy Mines Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines Inc., Martin Tower, Bethlehem, Pennsylvania 18016 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 108 (I.D. No. 46-03887), and Mine No. 108T (I.D. No. 46-06741) both located in Upshur County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that padlocks be used to prevent mine scoop battery connector tightening rings from loosening and disconnecting the battery plugs.

2. As an alternate method, petitioner, proposes that:

a. Spring-loaded, metal locking devices be used in lieu of padlocks;

b. These locking devices will be designed, installed, and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening;

c. The fabricated metal brackets will be securely attached to the battery receptacles and locking devices will be securely attached to the bracket; and

d. Equipment operators and maintenance personnel of the affected machines will receive training in the proper use of the locking device and in the hazards of breaking battery plug connections.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (August 5, 1985. Copies of the petition are available for inspection at that address.

Dated: June 27, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-16084 Filed 7-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-32-C]

K&L Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

K&L Coal Corporation, 742 Coal Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its No. 1 Slope (I.D. No. 36-06649) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

2. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

3. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

4. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1985. Copies of the petition are available for inspection at that address.

Dated: June 27, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-16082 Filed 7-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-83-C]

Texas Utilities Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Texas Utilities Mining Company, Skyway Tower, 400 North Olive Street, L.B. 85, Dallas, Texas 75201 has filed and amendment to a petition for modification. On August 23, 1982, Texas Utilities submitted a petition to modify the application of 30 CFR 77.201-1 (methane tests) to its Martin Lake Strip (I.D. No. 41-02632) located in Panola County, Texas; its Monticello Strip (I.D. No. 41-01900) located in Titus County, Texas; and its Sulphur Springs Strip (I.D. No. 41-02776) located in Hopkins County, Texas. On October 14, 1983,

MSHA published notice of the petition in the **Federal Register** (48 FR 46871), allowing interested parties 30 days to submit comments. On March 19, 1984, the petitioner submitted a request to amend the originally submitted petition for modification and MSHA published notice of this amendment in the **Federal Register** (49 FR 15159) on April 17, 1984 allowing interested parties 30 days to submit comments. On June 17, 1985, the petitioner submitted another request to amend the petition for modification to stipulate a new proposed alternate method of compliance, as follows:

3. As an alternate method, petitioner proposes to install a low-level methane detection system with specified conditions to continuously monitor for methane in all surface coal handling facilities.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1985. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: June 27, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 16081 Filed 7-3-85 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Services Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Services Section) to the National Council on the Arts will be held on July 22, 1985, from 9:00 a.m.-8:00 p.m. and on July 23, 1985, from 9:00 a.m.-6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

If time permits, a portion of this meeting will be open to the public on July 23, from 4:00-6:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on July 22, from 9:00 a.m.-8:00 p.m., and on July 23, from 9:00 a.m.-4:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85-15994 Filed 7-3-85; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel (Presenters Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Presenters Section) to the National Council on the Arts will be held on July 20, 1985, from 9:00 a.m.-8:00 p.m. and on July 21, 1985, from 9:00 a.m.-6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

If time permits, a portion of this meeting will be opened to the public on July 21, from 4:00-6:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on July 20, from 9:00 a.m.-8:00 p.m., and on July 21, from 9:00 a.m.-4:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85-15997 Filed 7-3-85; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Communication Section) to the National Council on the Arts will be held on July 15-16, 1985, from 9:00 a.m.-5:30 p.m in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on July 16, 1985, from 4:00-5:30 p.m. to discuss policy issues.

The remaining sessions of this meeting on July 15, 1985, from 9:00 a.m.-5:30 p.m. and on July 16, 1985, from 9:00 a.m.-4:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85-15991 Filed 7-3-85; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel (National Services Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts

Advisory Panel (National Services Section) to the National Council on the Arts will be held on July 22–23, 1985, from 9:15 a.m.–6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85–15996 Filed 7–3–85; 8:45 am]

BILLING CODE 7537-01-M

Program Initiative for Interdisciplinary Artists Review Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee (Pub. L. 92–463), as amended, notice is hereby given that an ad hoc meeting of the Review Committee for the Program Initiative for Interdisciplinary Artists, a joint program with the Rockefeller Foundation will be held on July 17, 1985, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on July 17, 1985, from 4:00–5:30 p.m. to discuss policy issues.

The remaining sessions of this meeting on July 17, 1985, from 9:00 a.m.–4:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980 these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85–15995; Filed 7–3–85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Responses to Safety Recommendations Availability

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMMENDATIONS

Recommendation No.	Respondent	Date	Subject
Aviation			
A-84-102	Federal Aviation Administration (FAA)	June 13, 1985	Procedures during ground operations in restricted visibility conditions.
A-85-26 thru -30	FAA	June 13, 1985	Eastern Aero Marine Model GA-12 flotation devices.
A-82-91 thru -93	FAA	June 13, 1985	Human performance guidelines, criteria, and training.
A-84-66	FAA	June 13, 1985	Stall avoidance system on Fairchild Swearingen Models SA 226 and SA 227 airplanes.
A-83-80 and -81	FAA	June 11, 1985	Tactile aisle markers and emergency exit indicators.
A-83-44	FAA	June 11, 1985	Main landing gear trunnions on affected Cessna Model 402C, 414A, and 421C airplanes.
A-77-70	FAA	June 11, 1985	Installations of approved shoulder harnesses at all seat locations.
A-84-123 and -124	FAA	June 10, 1985	Degradation of pilot performance as a result of automation.
A-80-52	FAA	June 10, 1985	Requirement for pilots to file for an alternate airport on an IFR flight plan based on ceiling and visibility forecasts.
A-85-15, -16, and -17	FAA	June 10, 1985	Development of a mechanical/aural/visual alert device for use by local and ground controllers and training of air traffic control personnel.
A-83-5 thru -7	FAA	May 30, 1985	Bladder-type fuel cells; Cessna flush plastic fuel caps.
A-84-97	FAA	May 30, 1985	Detection of cracks during early stages in CF 6-50 stage 1 high pressure turbine disks.
A-84-65	FAA	May 28, 1985	Inspection of strut housing assembly and replacement of landing gear upper bearing retaining pins.
A-84-7	FAA	May 28, 1985	Modification of flame tube suspension systems in Rolls Royce Dart 520 and 530 series engines.
A-85-23 thru -25	FAA	May 22, 1985	Marvel-Schebler Model MA3, MA4, and MA6 series carburetors; installation of one-piece combination primary and main venturi.
A-85-2 and -3	FAA	May 20, 1985	Horizontal stabilizer attachment on EMB-110P1 and -110P2 model airplanes.
A-78-1	FAA	May 20, 1985	Attenuation effects of various levels of precipitation and icing on airbone radomes of x- and c-band radar.
A-85-20 thru -22	FAA	June 3, 1985	Bellanca Models 7GC 7GCA, 7GCB, 7GCBA, 7HC, 7KC, 7KCAB, 7ECA, 7GCAA, 7GCBC, 8KCAB, and 8GCBC.
Highway			
H-84-70	State of Georgia, Office of the Governor	May 30, 1985	Licensing procedures for applicants of commercial or noncommercial bus licneses.
H-85-4 thru -6	Maryland State Dept. of Education	May 15, 1985	School bus crossings at railroad grades.
H-83-61	Nissan Motor Corp.	June 12, 1985	Nissan Child Safety Seat; labeling modification.
H-84-77 thru -86	Governor of Colorado	June 7, 1985	Drunken driving programs.
H-84-70	Governor of North Carolina	June 4, 1985	Minimum age requirement for operators of commercial buses.
H-84-11 thru -14	Governor of Georgia	May 16, 1985	Administrative revocation of licenses of drunk drivers; sobriety checkpoints.
H-84-12	California Office of Traffic Project	May 28, 1985	Gaze nystagmus training project.
H-83-46, -48	Louisiana Superintendant of Education	May 15, 1985	School bus safety.
Marine			
M-84-41, -42	U.S. Coast Guard	June 4, 1985	Loading standards for ocean towing vessels.
M-83-76 and -77	Delaware Office of the Governor	May 22, 1985	Role of alcohol and drugs in recreational boating.
M-84-49 thru -57	U.S. Coast Guard	May 16, 1985	Drillships; flooding of.
M-83-78	District of Columbia	May 21, 1985	Alcohol and drugs; recreational boating.
M-83-76 and -77	North Carolina Office of the Governor	May 9, 1985	Alcohol and drugs; recreational boating.
M-82-18	Prudential Lines, Inc.	May 23, 1985	Reduced visibility situations.
M-85-28	American Waterways Operations, Inc.	May 29, 1985	Towing vessel operator training.

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMMENDATIONS—Continued

Recommendation No.	Respondent	Date	Subject
Railroad			
R-84-19	New York City Transit Authority	June 10, 1985	Standards for track maintenance.
R-85-12	Federal Railroad Administration	June 3, 1985	Inspection of DOT Specification 112 tank cars.
R-84-46	Federal Railroad Administration	June 3, 1985	Passenger car interior design.
R-84-12 and -14	Association of American Railroads	May 30, 1985	Disengaged excess flow valve seats.
R-85-17	Electro-Motive	June 3, 1985	Amtrak locomotive axle.
R-83-17 and -18	Federal Highway Administration	June 6, 1985	Transportation of hazardous materials.
R-85-25 through -34	New York City Transit Authority	May 16, 1985	Provision of fire extinguishers on all subway trains (at motorman and conductor position); fire prevention.
R-82-35, -39, and -42	New York City Transit Authority	June 5, 1985	Train control systems.
R-83-60 and -61	Chicago and Northwestern	June 7, 1985	Employee familiarity with operating rules.
R-83-61	Houston Belt & Terminal Railway Company	May 14, 1985	Employee familiarity with operating rules.
R-83-60 and -61	Illinois Central Gulf	May 16, 1985	Employee familiarity with operating rules.
Pipeline			
P-84-48	Columbia Gas	June 3, 1985	Reporting of pipeline failures.
P-83-17	Truckline Gas Company	May 15, 1985	Operation and maintenance plan.
Intermodal			
I-85-5 and -6	Chemical Waste Management, Inc	June 10, 1985	Safe transportation of hazardous materials.
I-85-10 and -11	Research and Special Programs	May 31, 1985	Hazards of waste material shipment.
I-85-15	International Assn. of Chiefs of Police, Inc	May 21, 1985	Radius of evacuation zones in hazardous materials incidents.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge.)

Catherine T. Kaputa,

Federal Register Liaison Officer.

June 25, 1985.

[FR Doc. 85-15967 Filed 7-3-85; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-16055, License No. 34-19089-01, EA 85-60]

Advanced Medical System, Inc., Order Modifying License

I

Advanced Medical Systems, Inc., One Factory Row, Geneva, Ohio, 44041 (the "licensee") is the holder of byproduct material License No. 34-19089-01 issued by the Nuclear Regulatory Commission (the "NRC") pursuant to 10 CFR Part 30. The license authorizes, among other things, possession and use of 150,000 curies of cobalt-60 as solid metal for processing, for redistribution to authorized recipients, and research and development of sealed sources. This license was issued on November 2, 1979 and was due to expire on November 30, 1984. The license has continued in effect because the licensee submitted a timely renewal application which is currently being reviewed by the NRC.

II

The NRC conducted a special onsite safety inspection on February 21 and 22, 1985 in response to an apparent overexposure that the licensee reported to the NRC by letter dated Fabruary 24, 1985. The licensee provided additional information in letters dated April 17 and 25, 1985. The inspection also addressed telephone allegations received by the NRC Region III office on January 22, 1985. Four violations of NRC regulatory requirements and license conditions were identified. The violations which are described in the Notice of Violation and Proposed Imposition of Civil Penalties issued on this date involved: (1) A 2.9 rem whole body dose to an individual who entered the licensees hot cell facility during the fourth quarter of 1984; (2) failure to read dosimeters at appropriate intervals to assure that actual doses did not exceed anticipated doses (a measure which the licensee had specifically proposed as corrective action following a previous overexposure); (3) failure to calibrate dosimeters at required intervals; and (4) failure to make such surveys as were necessary to adequately evaluate the radiation hazards incident to the use of radioactive materials in the licensee's hot cell facility. Specifically, the only surveys were made at the hot cell door and showed radiation levels of 17.5 R/hr and 18 R/hr. These surveys did not accurately reflect the 81 R/hr radiation levels inside the hot cell.

An Enforcement Conference was held on March 13, 1985, in the NRC Region III office between the licensee's Radiation Safety Officer (RSO) and the Region III staff. A second Enforcement Conference was held by telephone on April 12, 1985 between the licensee's President, the RSO, and the NRC Region III staff. During the conferences the licensee agreed to take interim corrective actions until the radiation safety program could be upgraded. The conferences included a discussion of a previous similar overexposure that occurred during the fourth quarter of 1982 and resulted in the imposition of a $4,000 civil penalty on July 13, 1983. The NRC Region III staff concluded that the licensee had not adequately implemented corrective actions to prevent another overexposure after the previous enforcement action. The licensee agreed to discontinue all entries into the hot cell facility until improvements, acceptable to the NRC Region III staff, had been made in the licensee's radiation safety program. The NRC Region III office issued a Confirmation of Action letter, dated March 15, 1985, to document the NRC's understanding of the licensee's commitment. The licensee agreed to expand on these proposals and submit them in writing to the NRC Region III Administrator for review and approval.

By letters dated March 27 and April 4, 1985 and a telephone conversation on April 3, 1985, the licensee submitted proposed revisions to Procedure No. ISP-14, "Entering the Hot Cell." Based on this submittal and further conversations with licensee representatives, the licensee agreed that:

1. No individual shall enter the hot cell unless that individual has been adequately trained in accordance with Draft Procedure No. ISP-14, "Entering the Hot Cell," dated March 27, 1985.

2. No individual shall enter the hot cell without an alarming dosimeter.

When an alarming dosimeter alarms, an individual shall immediately leave the hot cell, retreat to a the Isotope Shop Area, and shall not reenter the cell until the exposure is assessed and a determination is made that reentry is allowable.

3. The in-cell monitor (Victoreen 500 electrometer with remote probe, Model 550-6A) that was calibrated by Victoreen and a new probe that was recently purchased will both be calibrated on a six month basis.

4. Each time the hot cell door is opened an before individuals are permitted to enter the hot cell a complete radiation survey of the hot cell will be performed remotely using a calibrated instrument and probe.

5. The RSO shall be physically present to supervise the operation and to verify that the hot cell entry operation is reasonably safe to prevent an overexposure.

The NRC Region III Staff has reviewed the licensee's submittal. To provide reasonable assurance that the potential for significant personnel exposure will be reduced and to ensure continued implementation of the licensee's commitments, I have determined that the public health, safety, and interest require the licensee's commitments be confirmed by an immediately effective Order.

III

Accordingly, pursuant to sections 81 and 161b of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, Parts 20 and 30, it is hereby ordered, effective immediately, that:

The licensee shall implement the radiation safety program described in numbered paragraphs 1 through 5 of Section II of this Order.

The Regional Administrator may relax or rescind any of the above conditions for good cause upon written application by the licensee.

IV

The licensee or any other person adversely affected by this Order may request a hearing on this Order within 25 days of the date of issuance of this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of any request shall also be sent to the Executive Legal Director at the same address and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. A request for hearing shall not stay the effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland this 28 day of June 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-16077 Filed 7-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Appendix R to 10 CFR Part 50 to Consumers Power Company (the licensee), for the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The exemption would provide an alternative to the requirement to separate redundant cables and equipment and associated non-safety circuits of redundant trains installed inside containment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption would provide a degree of fire protection equivalent to that required by Appendix R such that there would be no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts associated with fire protection modifications and would result in a much larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated July 20, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Bethesda, Maryland, this 25th day of June 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-16075 Filed 7-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Appendix R to 10 CFR Part 50 to Consumers Power Company (the licensee), for the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The exemption would provide an alternative to the requirement to install fixed suppression systems in the Engineered Safeguards Panel Room and the Corridor on the 590'-0" elevation of the Reactor Building between the Charging Pump Room and the 1-0 Switchgear Room. Alternate shutdown capability in accordance with Appendix R has been provided for each area above.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption would provide a degree of fire protection equivalent to that required by Appendix R such that there would be no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts associated with fire protection modifications and would result in a much larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated July 16, 1984, and in supplements dated July 20, 1984, August 10, 1984, October 1, 1984, December 28, 1984, March 19, 1985, and June 19, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Bethesda, Maryland, this 25th day of June 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-16076 Filed 7-3-85; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Survivor Questionnaire.

(2) Form(s) submitted: RL-94-F.

(3) Type of request: Revision of a currently approved collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 26,500.

(7) Annual reporting hours: 4,605.

(8) Collection description: Under Section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of deceased railroad employees. The collection obtains information about the survivors, if any, payment of burial expenses and administration of estate when unknown to the Board. The information will be used to determine whether and to whom benefits are payable.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85-16055 Filed 7-3-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Envionmental Impact Statement; Prince Georges County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advice the public that FHWA has assumed the lead agency role for the relocation of Calvert Road between US Route 1 and MD Route 201 in Prince George's County, Maryland. The Urban Mass Transit Administration is a cooperating agency. An enviromental impact statement will be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda—Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211–2187, Telephone: 301/962–4010, and/or Mr. William E. Boye, Chief, Inspections Division, Prince Georges County Department of Public Works and Transportation, County Administration Building, Upper Marlboro, Maryland 20772, Telephone: (301) 952–4100.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration and the Prince Georges County Department of Public Works and Transportation, is preparing and environmental impact statement on a proposal to close the existing Calvert Road at-grade crossing of the B&O Railroad in conjunction with the construction of the Metor E Line. The proposal would consider alternatives to maintain sufficient east-west roadway capacity between U.S. Route 1 and Route 201 in the College Park area. In addition to the No-Build alternate which would result in the severing of Calvert Road by the Metro construction, three alternatives will be considered for bypassing the existing crossing and a fourth will consider depressing Calvert Road beneath the railroad and proposed Metro. A public information meeting and an alternates public meeting have been held. A public hearing will be scheduled upon completion of the Draft EIS, with the time and place to be announced by public notice. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to the proposal are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: June 25, 1985.

Emil Elinsky,

Division Adminstrator Baltimore, Maryland.

[FR Doc. 85–15973 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. IP85–6; Notice 2]

Firestone Tire & Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Firestone Tire & Rubber Company, of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.)* for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires—Passenger Cars." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 15, 1985, and an opportunity was afforded for comment (50 FR 14789).

Paragraph S4.3.5 of Standard No. 109 requires each tire with a maximum inflation pressure of 60 psi to have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high (12.7 mm), the words, "Inflate to 60 psi." Ohtsu Tire & Rubber Company of Japan produced approximately 22,000 T105/80D13 bias tubeless Tempa spare tires for the Firestone Tire & Rubber Company that failed to comply with this requirement of Standard No. 109 of which 19,000 could have been mounted in vehicles shipped to the United States. The requisite information is presented in characters only 7 mm. high. Petitioner argued that the information is clearly legible, and consumers will not be misled. The tires were produced from July 15, 1984, through February 24, 1985, and all molds involved have been corrected.

No comments were received on the petition.

In establishing paragrah S4.3.5, NHTSA required that the words "Inflate to 60 psi" be added because these tires, unlike most with which consumers are familiar, are not designed for use at inflation pressures lower than the maximum inflation pressures. Although letters 12.7 mm in size would be easier to read, characters 7 mm in size should be legible to a person inflating the tire. The agency granted an identical petition by Toyo Rubber Industry, Co. Ltd. on October 28, 1982 (47 FR 47959).

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 1, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–16051 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott; Bahrain et al.

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publshing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain	Saudi Arabia
Iraq	Syria
Jordan	United Arab Emirates
Kuwait	Yemen, Arab Republic
Lebanon	Yemen, Peoples Democratic, Republic of
Libya	
Oman	
Qatar	

Ronald A Pearlman,

Assistant Secretary for Tax Policy.

[FR Doc. 85–16009 Filed 7–3–85; 8:45 am]

BILLING CODE 4810–25–M

[Supplement to Department Circular—Public Debt Series—No. 20–85]

Treasury Notes, Series F–1992

Washington, June 27, 1985.

The Secretary announced on June 26, 1985, that the interest rate on the notes designated Series F–1992, described in Department Circular—Public Debt Series—No. 20–85 dated June 19, 1985, will be 10¾ percent. Interest on the

notes will be payable at the rate of 10⅜ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-16030 Filed 7-3-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 19-85]

Treasury Notes, Series M-1989

Washington, June 26, 1985.

The Secretary announced on June 25, 1985, that the interest rate on the notes designated Series M-1989, described in Department Circular—Public Debt Series—No. 19-85 dated June 19, 1985, will be 9-5/8 percent. Interest on the notes will be payable at the rate of 9-5/8 percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-16031 Filed 7-3-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 21-85]

Treasury Bonds of 2005

Washington, June 28, 1985.

The Secretary announced on June 27, 1985, that the interest rate on the bonds designated Bonds of 2005, described in Department Circular—Public Debt Series—No. 21-85 dated June 19, 1985, will be 10¾ percent. Interest on the bonds will be payable at the rate of 10¾ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-16032 Filed 7-3-85; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Schedule of Productivity Improvement (A-76) Reviews for the Department of Medicine and Surgery

Correction

In FR Doc. 85-14007 beginning on page 24859 in the issue of Thursday, June 13, 1985, make the following corrections:

1. On page 24863, in the table, in the first column under Field facility, insert the heading "Dietetic Foods" preceding Region No. 1.

2. On page 24865, in the table, under Region No. 5, in the entry for Minneapolis, MN, in the fourth column under Inplementation date, "1987" should read "May 1987".

3. On page 24868, in the table, under Region No. 4 (Laundry and Dry cleaning Services), in the entry for Chillicothe, OH, in the fourth column, the "PWS complete" date should read "June 1986"; also, in the first column under Field facility, in the fifth entry, "Marion, WI" should read "Marion, IN".

4. On page 24869, in the table, in the first column, under Region No. 1, in the entry for Bedford, MA, the "MEO complete" date should read "January 1986", the "Solicitation issued" date should read "July 1986", the "Bid closing date" should read "November 1986", and under "Implementation of contract/MEO" insert the date "January 1987".

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 129
Friday, July 5, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:22 p.m. on Friday, June 28, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and assumption of the liability to pay deposits made in First Bank and Trust, Tracy City, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, June 28, 1985; (2) accept the bid for the transaction submitted by First National Bank of Shelbyville, Shelbyville, Tennessee; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeing, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: July 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-16107 Filed 7-2-85; 11:15 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, July 8, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: July 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-16108 Filed 7-2-85; 11:15 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, July 8, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Pensacola Loan and Savings Bank, an operating noninsured industrial savings bank located at 180 North Palafox Street, Pensacola, Florida.

Lyndon Guaranty Bank of New York, a proposed new bank to be located at 1600 W. Ridge Road, Rochester, New York.

Bay Loan and Investment Corporation, a proposed new bank to be located at 414 Main Street, East Greenwich, Rhode Island.

Application for consent to purchase assets and assume liabilities:

Citizens First National Bank of New Jersey, Ridgewood, New Jersey, for consent to purchase certain assets of and assume the liability to pay deposits made in the Barnegat Branch, Forked River Branch, Manahawkin Branch, Ship Bottom Branch, Tuckerton Branch, and Crestwood Branch of Jersey

Shore Savings and Loan Association, Toms River, New Jersey, a non-FDIC-insured institution.

Memorandum re: Revisions to Appendix E of the delegations of authority to the Division of Liquidation.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: July 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–16109 Filed 7–2–85; 11:15 am]

BILLING CODE 6714–01–M

4

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 9, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, July 11, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Draft AO 1985–18
  Richard C. Semak, Office of Government Affairs, Automobile Club of Michigan Political Action Committee
Revisions to 11 CFR 110.1 and 110.2:
  Summary of comments and announcement of public hearing
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR DOC 85–16142 Filed 7–2–85; 2:25 p.m.]

BILLING CODE 6715–01–M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: July 10–12, 1985, 9:00 a.m.

PLACE: Sheraton Missoula Hotel, 200 South Pattee Street, Missoula, Montana.

MATTERS TO BE CONSIDERED:

- Council Consideration of Entering Rulemaking on an Amendment Regarding the Council's Model Conservation Standards.
- Staff Presentation of the Draft 1985 Power Plan and Council Consideration of Entering Rulemaking on the Draft.
- Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–16093 Filed 7–2–85; 9:27 am]

BILLING CODE 0000–00–M

Federal Register

Friday
July 5, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA83-5119	Sept. 16, 1983.
Connecticut: CT85-3023	June 7, 1985.
Delaware: DE85-3021	Apr. 19, 1985.
District of Columbia: DC84-3009	Apr. 6, 1984.
Kansas:	
KS84-4009	May 10, 1985.
KS84-4052	Aug. 24, 1984.
Kentucky:	
KY84-1008	Mar. 16, 1984.
KY84-1011	Mar. 23, 1984.
Michigan: MI83-2020	Mar. 18, 1983.
Montana: MT83-5101	Feb. 18, 1983.
Ohio: OH85-5028	June 21, 1985.
Tennessee:	
TN83-1068	Nov. 25, 1983.
TN83-1087	Do.
TN84-1023	Aug. 31, 1984.
TN84-1024	Do.
Virginia:	
VA85-3020	Apr. 5, 1985.
VA82-3034	Dec. 3, 1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

New York: NY83-3044 (NY85-3036)	Aug. 26, 1983.

Signed at Washington, D.C. this 28th day of June 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATION P# 1

DECISION NO. CA81-5119 - Mod. #10
148 FR 41702 - September 16, 1983)
San Diego County, California

Add:

	Basic Hourly Rates	Fringe Benefits
Carpenters: Work on single family homes and apartments up to and including three stories	$14.00	$4.27

DECISION NO. DC84-3009- MOD. #17
149 FR 11800-April 6, 1984
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

ADD:

	Basic Hourly Rates	Fringe Benefits
LABORERS: Building Construction Only: vibrator operators, pipelayers, or tile layers, operators of jackhammers		
Arlington & Fairfax Counties, Virginia	10.84	2.05
Remaining Areas	11.87	2.05

DELETE:

LABORERS: Building Construction Only: vibrator operator of jackhammers

DECISION NO. CT85-3023 - MOD. #1
(50 FR 24109 - June 7, 1985)
Statewide Connecticut

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS; CEMENT MASONS; CEMENT FINISHERS; MARBLE MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS: Heavy & Highway		
Area 1	14.00	3.15
Area 3	13.80	3.35
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; LATHERS; RESILIENT FLOOR LAYERS:		
Areas 1 & 2	15.58	2.55
Area 3	15.10	3.05
Area 4	14.40	3.80
Area 5	14.45	3.80
Area 6	15.75	2.43
LABORERS (HIGHWAY - In the City of Hartford: Contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing, except state and interstate highways)	13.15	2.90
LABORERS (HIGHWAY - except contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing in the City of Hartford other than state and interstate highways & HEAVY CONSTRUCTION):		
Group 1	13.15	2.90
Group 2	13.40	2.90
Group 3	13.65	2.90
Group 4	13.90	2.90

MODIFICATION P. 2

DECISION NO. DE85-3021 - MOD. #2
150 FR 15693 - April 19, 1985)
Statewide Delaware

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS - Building Construction: New Castle County		
Class 1	12.67	3.63
Class 2	12.92	3.63
Class 3	13.17	3.63
Class 4	13.67	3.63
Class 5	13.92	3.63
Kent & Sussex Cos.		
Class 1	11.62	3.63
Class 2	11.87	3.63
Class 3	12.12	3.63
Class 4	12.22	3.63
Class 5	12.87	3.63
LABORERS - Heavy Const. New Castle County: General laborers, asphalt tamper, asphalt raker, concrete pitman, landscaper, planter, puddler railroad trackman, rubber magazine tender, seeder & arboriate and Signalman	10.42	3.63
Pipelayers	10.57	3.63
Blasters, caissons, and cofferdams (open air below 8 ft. where excavations for circular caissons and cofferdams are 8 ft. or more below level of natural grade adjacent to start point) diamond point drills, form setters, gunite nozzle operators, and wagon drills	10.72	3.63
LABORERS - Heavy Const. Kent & Sussex Cos. Common laborers, landscrapers, planters seeders, aborists, asphalt tampers, rakers concrete pitman, puddlers, rubber magazine tenders, railroad trackman, signal men	8.37	3.63
Pipelayers	8.52	3.63
Wagon drill, diamond point drill, gunnite nozzlemen, form setters, blasters, caissons & coffer dams (open air below 8')	8.67	3.63

DECISION NO. KS84-4009
MOD. #1 -(50FR 19853)
May 10, 1985

Douglas, Jefferson, Leavenworth, Miami and Shawnee Counties, Kansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Laborers:		
Zone 1		
Group A	$7.95	$2.30
Group B	8.20	2.30
Zone 2		
Group A	8.75	2.30
	9.00	2.30
Zone 3		
Group A	9.10	2.40
Group B	9.35	2.40
Zone 4		
Group A	7.95	2.30
Group B	8.20	2.30

MODIFICATION P. 3

DECISION NO. KY84-1008
Mod # 3
Boone, Campbell, Kenton, & Pendleton Cos., Kentucky
(49 FR 10000 - March 16, 1984)
CHANGE:
LABORERS:
Pendleton County:

	Basic Hourly Rates	Fringe Benefits
Laborers - Light Commercial *(SEE SCOPE OF WORK)	$ 8.20	2.20
Laborers - Other Bldg Construction:		
Group I	$10.15	2.20
Group II	10.55	2.20
Group III	10.75	2.20
Group IV	10.85	2.20
Group V	11.35	2.20
Group VI	11.65	2.20

*SCOPE OF WORK:
Laborers - Light Commercial - Includes Bowling Alley Bldgs; Banks-20,000 sq ft or less: Churches; Funeral Homes; Resturants; Fast Food Outlets; Skating Rinks: Recreational Bldgs - 20,000 sq ft or less: Storage Bldgs - 20,000 sq ft or less: Open Face Shopping Centers that encompass 10 stores or less: Individual Retail Stores - 20,000 sq ft or less: Service Stations; Nursing Homes: Pre-Med Treatment or Doctor's Bldgs: Office Bldgs - 20,000 sq ft or less: & Metal Bldgs - 20,000 sq ft or less.

DECISION NO. KY84-1011
Mod # 4
(49 FR 11066 - March 23, 1984)
Fayette & Franklin Cos., Kentucky

CHANGE:
LABORERS:

	Basic Hourly Rates	Fringe Benefits
Laborers - Light Commercial *(See Scope of Work)	$ 8.20	2.20
Laborers - Other Building Construction:		
Group I	$10.15	2.20
Group II	10.55	2.20
Group III	10.75	2.20
Group IV	10.85	2.20
Group V	11.35	2.20
Group VI	11.65	2.20

*SCOPE OF WORK:
Laborers - Light Commercial - Includes Bowling Alley Bldgs; Banks-20,000 sq ft or less: Churches; Funeral Homes; Resturants; Fast Food Outlets; Skating Rinks: Recreational Bldgs - 20,000 sq ft or less: Storage Bldgs - 20,000 sq ft or less: Open Face Shopping Centers that encompass 10 stores or less: Individual Retail Stores - 20,000 sq ft or less: Service Stations: Nursing Homes: Pre-Med Treatment or Doctor's Bldgs: Office Bldgs - 20,000 sq ft or less: & Metal Bldgs - 20,000 sq ft or less.

(5)

MODIFICATION P. 4

DECISION NO. KS84-4052
MOD. # 3 (49FR13780)
August 24, 1984
Sedgwick County, Kansas
CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$13.25	$1.79

DECISION NO. MI83-2020 - MOD. #6
(48 FR 11615 - March 18, 1983)
Genesee, Huron, Lapeer, etc., Counties, Michigan
CHANGE:

	Basic Hourly Rates	Fringe Benefits
Plumbers & Pipefitters: Remainder of Counties: Plumbers ONLY: Work on single family homes and apartments up to and including 2 stories; also strip stores, remodeling existing supermarket; restaurant work (plumbing contracts $25,000 or less), convenience stores, industrial park type warehouse buildings up to 50,000 sq. ft. with or without an additional 10,000 sq. ft. of office space, 1 store retail or office buildings up to 10,000 sq. ft., tenant work up to 10,000 sq. ft. per tenant	$13.90	$3.20
Plumbers: All other work	15.09	6.43

DECISION NO. MT83-5101 - Mod. #7
(48 FR 7370 - February 18, 1983)
Statewide, Montana
Change:

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: Area 2:		
Lineman	$17.68	$1.50+3%%
Cable Splicers	19.68	1.50+3%%
Pole Sprayer	15.71	1.50+3%%
Line Equipment Op.	15.07	1.50+3%%
Jackhammer, Compressorman	13.06	1.50+3%%
Groundman "A"	12.26	1.50+3%%
Tree Trimmer	16.30	1.50+3%%
Powderman	13.06	1.50+3%%

Head Grounman and Groundman "B" are not Applicable

(6)

DECISION NUMBER OH85-5028 - MOD. #1
(50 FR 25831 - June 21, 1985)
Adams, Allen,...Wood, & Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons:		
Area 8	$17.70	$2.65
Electricians:		
Area 15	17.50	3.1%+ 2.00
Glaziers:		
Area 9	16.70	1.52
Ironworkers:		
Area 8	16.96	5.36
Area 11	20.62	4.13
Millwrights:		
Area 7	16.65	3.70
Painters:		
Area 14:		
Brush; Roller	13.00	.76+k
Drywall Finishers & Paperhangers	14.00	.76+k
Sandblasters; Spray $1.00 Premium		
Area 16:		
Brush; Roller; Washing; Wallcovering; & Paperhanging	16.00	
Open Structural Steel	16.50	
Taping; Beding; Finishing & Sanding	16.75	
Spray; Sandblasting; Hopper Tender; Swing Stage; & Window Jacks	17.00	
Pipefitters; Plumbers; & Steamfitters:		
Area 16: Plumbers	20.73	4.00
Plasterers:		
Area 7	18.45	1.65
Sheet Metal Workers:		
Area 9	20.21	4.40
Soft Floor Layers:		
Area 5	16.60	2.625
Footnote:		
k. $50.00 per year per employee		

	Basic Hourly Rates	Fringe Benefits
Omit:		
Line Construction:		
Area 10:		
Wage rates & Area Description		
Area 15:		
Wage rates		
Add:		
Line Construction:		
Area 10:		
Linemen; Cable Splicers; Operators: Hole Digging Equipment, Cranes, Hydraulic Lift or Bucket	$17.48	3 1/2%+ $2.40
Operators: Line Truck with Winch or Pole & Steel Handling	13.11	3 1/2%+ 2.40
Operators: Non-Specialized Trucks & Miscellaneous Equipment; Groundmen-Truck Drivers	10.49	3 1/2%+ 2.40
Area 15:		
Cable Splicers; Operators: All Mechanized Equipment; & Linemen	19.32	3 1/2%+ 1.00
Groundmen	10.66	3 1/2%+ 1.00
Area Descriptions:		
Line Construction:		
Area 10: Clinton, Darke, Greene, Miami, Montgomery, Preble, & Warren (Wayne, Clear Creek, & Franklin Twps.) Cos.		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. TN83-1088		
Mod # 6		
(48 FR 53272 - November 25, 1983)		
Shelby County, Tennessee		
CHANGE:		
BOILERMAKERS	$16.20	4.105
DECISION NO. TN83-1087		
Mod # 9		
(48 FR 53270 - November 25, 1983)		
Hamilton, Marion, Polk & Rhea Counties, Tennessee		
CHANGE:		
BOILERMAKERS	$16.20	4.105
DECISION NO. TN84-1023		
Mod # 3		
(49 FR 34644 - August 31, 1984)		
Carter, Greene, Hawkins, Johnson, Sullivan, Unicoi, & Washington Cos., TN		
CHANGE:		
BOILERMAKERS	$16.20	4.105
DECISION NO. TN84-1024		
Mod # 4		
(49 FR 34645 - August 31, 1984)		
Anderson, Knox, Monroe & Roane Cos., Tennessee		
CHANGE:		
BOILERMAKERS	$16.20	4.105

	Basic Hourly Rates	Fringe Benefits
DECISION NO. VA85-3020-MOD. #2		
(50 FR 13706-April 5, 1985)		
HENRICO and the Independent city of RICHMOND		
CHANGE:		
CARPENTERS, including LATHERS and SOFT FLOOR LAYERS	12.35	2.15
PILEDRIVERMEN AND DOCKBUILDERS	12.35	2.15
DECISION NO. VA82-3034-MOD. #10		
(47 FR 54746-December 3, 1982)		
The Cities of CHESAPEAKE, PORTSMOUTH, & VIRGINIA BEACH		
CHANGE:		
CARPENTERS, including LATHERS and SOFT FLOOR LAYERS	12.35	2.11
PILEDRIVERMEN & DOCKBUILDERS	12.35	2.11
DELETE:		
LATHERS	10.75	.25

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: STEUBEN

DECISION NO. NY85-3036 DATE: Date of Publication

Supersedes Decision No. NY83-3044 dated August 26, 1983, in 48 FR 38963

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories); Heavy (except water well drilling) and Highway Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.18	4.09
BOILERMAKERS	18.50	4.79
BRICKLAYERS; CEMENT MASONS (BUILDING); PLASTERERS; MARBLE MASONS; TILE AND TERRAZZO WORKERS	14.50	17.2%
CARPENTERS:		
Area 1:		
Carpenters	13.26	3.085
Millwrights & Pile-drivers	13.36	3.085
Carpenters & Piledrivers (Heavy & Highway)	14.355	3.34+a
Area 2:		
Carpenters & Soft Floor Layers	12.81	3.08
Light commercial - up to and including $90,000	10.25	3.08
Millwrights & Piledrivers	13.06	3.08
Carpenters (Heavy & Highway)	14.76	2.985+a
Area 3:		
Carpenters and Soft Floor Layers	12.30	3.08
Millwrights and Piledrivers	12.45	2.87
Carpenters and Pile-drivers (Heavy and Highway)	14.76	2.985+a
CEMENT MASONS (HEAVY & HIGHWAY)	15.28	2.13
ELECTRICIANS	17.00	3.15+ 3%+b
GLAZIERS	10.92	1.68
IRONWORKERS:		
Area 1:		
Structural, Ornamental, Reinforcing, Machinery Movers, Riggers, Rod-men, Fence Erectors & Stone Derrickmen	16.51	4.21
Sheeters	16.76	4.21
Sheeters, Bucker-up	16.64	4.21
Area 2	14.75	3.38
LABORERS (BUILDING)	11.27	1.35
LABORERS (HEAVY & HIGHWAY):		
Group 1	13.79	1.70+c
Group 2	13.99	1.70+c
Group 3	14.19	1.70+c
Group 4	14.39	1.70+c
MARBLE, TILE & TERRAZZO FINISHERS	13.05	4.99
PAINTERS:		
Area 1:		
Brush	11.10	2.20
Toothpick Staging over 25'; Structural Scaffold over 39'	10.30	1.45
Paperhangers: Vinyl Hangers	10.40	1.45
Swing Chair, Swing Scaffold; Power Grinder with Respirator	10.55	1.45
Epoxy - Brush & Roll	10.60	1.45
Stilts	10.80	1.45
Spray	10.90	1.45
Structural Steel: Steeplejack (over 100'); Sandblasting; Steam-cleaning (acid or hi-pressure water)	11.05	1.45
Spray - Epoxy	11.55	1.45
Area 2:		
Basic	11.00	2.70
Steel above 20'; Ladder or Scaffold over 30' high; Spray; All toxic coating; Taping; Wall covering hanging	11.60	2.70
Bridges	12.25	2.70
PLUMBERS; STEAMFITTERS:		
Area 1	17.74	5.205
Area 2	15.80	3.40
POWER EQUIPMENT OPERATORS (BUILDING)		
Group 1-A	16.18	4.55+d
Group 1-B	16.43	4.55+d
Group 1-C	16.68	4.55+d
Group 1-D	16.93	4.55+d

DECISION NO. NY85-3036

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (BUILDING) Continued		
Group 1-E	17.43	4.55+d
Group 1-F	17.93	4.55+d
Group 1-G	18.43	4.55+d
Group 1-H	18.93	4.55+d
Group 2	16.18	4.55+d
Group 3	15.73	4.55+d
Group 4	14.20	4.55+d
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY)		
Group 1	16.26	4.35+e
Group 2	15.70	4.35+e
Group 3	14.11	4.35+e
Group 4	12.71	4.35+e
ROOFERS	13.79	2.99
SHEET METAL WORKERS	14.95	2.16+ 3%
SPRINKLER FITTERS	16.92	2.83
TRUCK DRIVERS (HEAVY & HIGHWAY):		
Township of Wayland:		
Group 1	13.74	2.80+f
Group 2	13.79	2.80+f
Group 3	13.84	2.80+f
Group 4	13.99	2.80+f
Group 5	14.14	2.80+f
Remainder of County		
Group 1	13.81	2.73+f
Group 2	13.86	2.73+f
Group 3	13.91	2.73+f
Group 4	14.06	2.73+f
Group 5	14.21	2.73+f

WELDERS: Receive rate prescribed for craft to which welding is incidental

FOOTNOTES:

a. C and D

b. Employer shall work 4 hours and receive 8 hours pay on Christmas Eve

c. Paid Holidays: A through F, provided the employee has worked the day before and after the Holiday

d. Paid Holidays: A through F, providing employee works the working day immediately preceding the Holiday, or on the scheduled work day immediately following the Holiday

e. Paid Holidays: A through F, providing the employee works the day before and the day after the Holiday

f. Paid Holidays: A through F, provided the employee has worked the day before and after the Holiday

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

AREA DESCRIPTIONS

CARPENTERS
Area 1: Townships of Prattsburg and Pulteney, Village of Hammondsport.
Area 2: Townships of Troupsburg, Hartsville, Fremont, Wayland, Jasper, Hornellsville, Avoca, Cohocton, Canisteo, Howard, Dansville, Wheeler, Cameron, Greenwood, West Union, and Bath- west of a line drawn from the Bath-Cameron Road (Route #10) then west on Turnpike Road to Shannon Road, north on Shannon Road to Knight Settlement Road, south on Knight Settlement Road to Cochrane Road, west on Conchrean Road to Campbell-Creek Road to Route 53, north on Route 53 to the Wheeler Township Line.
Area 3: Remainder of the County.

IRONWORKERS:
Area 1: Townships of Atlantic and South Dansville.
Area 2: Remainder of County.

PAINTERS:
Area 1: Townships of Cameron, Bath, Thurston, Bradford, Campbell, Erwin, Lindley, Hornby, City of Corning, Caton, Addison and Rathbone.
Area 2: Remainder of County.

PLUMBERS; STEAMFITTERS:
Area 1: Townships of Avoca, Canisteo, Cohocton, Dansville, Fremont, West Union, Greenville, Hartsville, Hornellsville, Howard, Wheeler, Jasper, Prattsburg, Pulteney, Troupsburg, Wayland, Woodhull, Cameron, Rathbone and Tuscarora.
Area 2: Remainder of County.

LABORERS
HEAVY and HIGHWAY CONSTRUCTION

Group 1: Laborers; Drill Tenders; Outboard and Hand Boats.

Group 2: Bull Float; Chain Saw; Concrete Aggregate; Bin Concrete Bootman; Gin Buggy; Hand or Machine Vibrator; Jackhammer; Mason Tender; Mortor Mixer; Pavement Breaker; Handlers or all Steel Mesh; Small Generators for Laborers' Tools; Installation of bridge drainage pipe; Pipelayers; Vibrator type Rollers; Tamper; Drill Doctor; Tail or Crew Operator on Asphalt Paver; Water Pump Operator (1½" and single diaphram); Nozzle (Asphalt, Gunnite, Seeding and Sandblasting); Laborers on Chain Link Fence Erection; Rock Splitter and Power Unit; Pusher type Concrete Saw and all other gas, electric, oil and air tool Operators; Wrecking Laborer.

Group 3: All Rock or Drill Machine Operators (except Quarry Master and similar type); Acetylene Torch Operator; Asphalt Raker; Powderman.

Group 4: Blasters; Form Setter; Stone or Granite Curb Setters.

POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION

Group 1: Cranes:
A - 121 feet and under
B - Between 121 - 151 feet
C - Between 151 - 201 feet
D - Between 201 - 251 feet
E - Between 251 - 301 feet
F - Between 301 - 351 feet
G - Between 351 - 401 feet
H - Between 401 - 451 feet

Group 2: Air Tugger; Backhoe; Clamshell; Dragline; Shovel and similar Machines over 3/8 cu. yd. capacity (factory rating); Big Generator Plant; Bridge Crane (all types); Cableway; Caisson Auger and similar type Machine; Climbing and/or Tower Crane (all kinds and all types); Derrick; Dredge; Forklift (with factory rating of 15 feet or more of lift); Hoist (on steel erection); Mucking Machine; Ross Carrier (and similar types); Three drum Hoist (when all drums are in use).

Group 3: "A" Frame Truck; Back Filling Machine; Barber Green and similar type Loader; Belt Crete and similar type Machine; Bituminous Spreading Machine; Bulldozer; Carry-all type Scraper; Compressors, 4 not to exceed 1200 C.F.M. combined capacity, 3 or less with more than 1200 C.F.M., but not to exceed 200 C.F.M.; Concrete Mixer; Concrete Pump; Core Drill; Crane-Hoe-Shovel (3/8 yd. capacity or less)(factory rating); Dinky Locomotive (all types); Elevating type Grader; Elevator; Fine Grade Machine (all kinds); Front End Loader; Forklift (with factory rating of less than 15 ft. of lift); High Pressure Boiler (over 15 lbs. pressure); Hoist (1 or 2 drums); Motor Grader; Maintenance Engineer; Post Hole Digger; Sheepsfoot Roller; Side Boom; Stone Crusher; Submersible Electric Pump, when used in lieu of Well Point System; Tandem Roller; Tournedozer and similar types; Tournapull; Tower Mobile and similar kinds Trenching Machine; Vibratory type Roller and similar equipment of all kinds; Welder; Well Drill; Well Point System.

Group 4: Any combination (not to exceed 3 pieces of equipment); Pumps; Welding Machines or Mechanical Conveyors (over 12 ft. in length); Belt Crete Generator; Compressors - 3 or less not to exceed 1200 C.F.M. combined capacity; Fireman; Longitudinal Float; Mechanical Heater; Roller (Fill and Grade); Rubber-tired Tractor; Oilers.

POWER EQUIPMENT OPERATORS
HEAVY and HIGHWAY CONSTRUCTION

Group 1: Automated Concrete Spreader (CMI); Automatic Fine Grader; Backhoe (except tractor mounted, rubber tired); Belt Placer (CMI type); Backtop Plant (automated); Cableway; Caisson Auger; Central Mix Concrete Plant (automated); Cherry Picker (over 5 tons capacity); Concrete Pump (8" or over); Crane; Cranes and Derricks (steel erection); Dragline; Dredge; Dual Drum Paver; Excavator (all purpose-hydraulically operated) (Gradall or similar); Fork Lift (factory rated 15 ft. and over); Front End Loader 4 cu. yds. and over); Head Tower (Sauerman or equal) Hoist (2 or 3 drums); Mine Hoist; Mucking Machine or Mole; Over Head Crane (Gantry or Straddle type); Piledriver; Power Grader; Quarry Master (or equivalent); Scraper; Shovel; Sideboom; Skip Form Paver; Tractor drawn Belt type Loader; Truck Crane; Tunnel Shovel.

Group 2: Backhoe (tractor mounted, rubber tired); Bituminous Spreader and Mixer; Blacktop Plant (non-automated); Blast or Rotary Drill Truck or Tractor mounted); Boring Machine; Cage-hoist; Central Mix Plant (non-automated and all Concrete Batching Plants); Cherry Picker (5 tons capacity and under); Compressors (4 or less, exceeding 2000 C.F.M. combined capacity); Concrete Paver (over 16S); Concrete Pump (under 8"); Crusher; Diesel power unit; Drill Rigs (tractor mounted); Front End Loader (under 4 cu. yd.); Hi-pressure Boiler (15 lbs. and over); Hoist (one drum); Kolman Plant Loader and similar type Loaders; Locomotive Maintenance/Engineer/Greaseman/Welder; Mixer for stabilized base Self-monorail Machine; Plant Engineer; Pump Crete; Ready Mix Concrete Plant; Refrigeration equipment (for Soil Stabilization); Road Widener; Roller (all above Subgrade); Tractor with Dozer and/or Pusher; Trencher; Tugger-hoist; Winch; Winch Cat.

Group 3: A-Frame Truck; Compressors (4 not to exceed 2000 C.F.M. combined capacity or 3 or less with more than 1200 C.FM. but not to exceed 2000 C.F.M.); Compressors (any size but subject to other provisions for Compressors); Dust Collectors; Generators; Pumps; Welding Machines (4 of any type of combination); Concrete Pavement Spreaders and Finishers; Conveyor; Drill-core; Drill-well; Electric Pumps used in conjunction with Well Point Systems; Farm Tractor with accessories; Fine Grade Machine; Fork Lift (under 15 ft.); Gunite Machine; Hammers (Hydraulic-self-propelled); Post Hole Digger and Post Driver; Power Sweeper; Roller (Grade and Fill); Submersible Electric Pump (when used in lieu of Well Point System); Tractor with tower accessories; Vibratory Compactor; Vibro Tamp; Well Point.

POWER EQUIPMENT OPERATORS (Cont'd)
HEAVY and HIGHWAY CONSTRUCTION (Cont'd)

Group 4: Aggregate Plant; Boiler (used in conjunction with production); Cement and Bin Operator; Compressors (3 or less not to exceed 1200 C.F.M. combined capacity); Compressor (any size, but subject to other provisions for Compressors); Dust Collectors; Generator Pumps; Welding Machines (3 or less of any type or combination); Concrete Paver or Mixer (16S and under); Concrete Saw (self-propelled); Fireman; Form Tamper; Hydraulic Pump (jacking system); Lighting Plants; Mulching Machine; Oiler Parapet (Concrete or Pavement Grinder); Power Broom (towed); Power Heaterman; Revinius Widener; Shell Winder; Steam Cleaner; Tractor.

Group 5: Master Mechanic.

TRUCK DRIVERS - Township of Wayland
HEAVY and HIGHWAY CONSTRUCTION

Group 1: Pickups; Panel Trucks; Flatboy Material Trucks (straight jobs); Single Axle Dump Trucks; Dumpster; Greasers; Truck Tireman.

Group 2: Tandems; Batch Trucks and Mechanics.

Group 3: Semi-trailers; Low-boy Trucks; Asphalt Distributors Trucks; Agitator; Mixer Trucks and Dumpcrete type vehicles; Truck Mechanic.

Group 4: Specialized Earth Moving Equipment, Euclid type or similar off-highway equipment, where not self-loaded, and Straddle (Ross) Carrier.

Group 5: Off-highway Tandem Back-dump; Twin engine equipment double hitched equipment where not self loaded.

Remainder of County

Group 1: Pickups; Panel Trucks; Flatboy Material Trucks (straight jobs); Single Axle Dump Trucks; Dumpsters; Material Checker and Receivers; Greasers; Truck Tiremen; Mechanic Helpers and Part Chaser.

Group 2: Tandems; Batch Trucks; Mechanics and Dispatcher.

Group 3: Semi-trailers; Low-boy Trucks; Asphalt Distributors Trucks; Agitator; Mixer trucks and Dumpcrete type vehicles; Truck Mechanic.

Group 4: Specialized Earth Moving Equipment, Euclid type or similar off-highway equipment, where not self loaded, and Straddle (Ross) Carrier.

Group 5: Off-highway Tandem Back-dump; Twin engine equipment and double hitched equipment where not self loaded.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

[FR Doc. 85-15909 Filed 7-3-85; 8:45 am]
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Federal Register

Friday
July 5, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Limit on Payments for Direct Medical Education Costs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-338-F]

Medicare Program; Limit on Payments for Direct Medical Education Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule imposes a one year limit on the amount the Medicare program will reimburse providers for their direct costs of approved medical education activities for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986. The limit is tied to Medicare utilization and is based on the lesser of a provider's allowable cost of approved medical educational activities during the cost reporting period subject to the limit, or during a base year. The base year is the provider's cost reporting period beginning on or after October 1, 1983 but before October 1, 1984. It is our belief that this change will help ensure that Medicare pays for only those costs that are necessary in the efficient delivery of health services to Medicare beneficiaries.

EFFECTIVE DATE: The regulations are effective for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Elstein, (301) 597-1758.

SUPPLEMENTARY INFORMATION:

I. Background—Current Policy

Medicare has historically paid a share of the net cost of approved medical educational activities. Our regulations at 42 CFR 405.421 define approved educational activities to mean formally organized or planned programs of study usually engaged in by providers in order to enhance the quality of care in an institution. These activities include approved training programs for physicians, nurses, and certain paraprofessionals (for example, radiology technicians).

Since the inception of the Medicare program, we have shared in the costs of approved medical educational activities, as defined above, on a reasonable cost basis. Section 1861(v)(1)(A) of the Social Security Act (the Act) defines reasonable cost as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services to Medicare beneficiaries. Section 405.421 of the regulations further specifies that the allowable cost of approved educational activities is the net cost, which is determined by deducting tuition revenues from total costs.

Under sections 1886 (a)(4) and (d)(1)(A) of the Act, the costs of approved medical educational activities are excluded from the calculation of the payment rate under the prospective payment system for inpatient hospital services. The Medicare program continues reimbursement for these costs on a reasonable cost basis. In addition, hospitals excluded from the prospective payment system that have approved medical education programs continue to be reimbursed as described in § 405.421.

Thus, costs related to the actual operation of an approved program, such as salaries of interns and residents, are excluded from the "operating costs of inpatient hospital services." These costs are treated as a pass-through cost that is excluded from the calculation of the prospective payment rate and is reimbursed separately on a reasonable cost basis. Costs of on-the-job training, maintenance of a medical library and certain other activities are considered normal operating costs and are included in the calculation of the prospective payment rate.

We also note that section 1886(d)(5)(B) of the Act and § 412.115(b) of our regulations (formerly § 405.477(d)(2) and recently redesignated at 50 FR 12759 on March 29, 1985) specify that hospitals with "indirect costs" for medical education will receive an additional payment amount under the prospective payment system. As used in section 1886(d)(5)(B) of the Act, "indirect costs of medical education" means those additional operating (that is, patient care) costs incurred by hospitals with medical education programs (for example, added costs caused by the ordering of an increased number of tests by interns and residents in hospitals with approved programs). This final rule does not apply to indirect medical educational payments. It applies only to the costs of approved educational activities as defined in § 405.421. Therefore, in order to avoid confusion in the discussion below, when we use the phrase "direct medical education costs," we are referring to the reimbursement authorized by § 405.421.

On May 21, 1985, we published a proposed rule (50 FR 21026) in which we proposed to revise § 405.421 to establish a one year limit, effective for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986, on the amount of Medicare reimbursement for the cost of approved medical educational activities. The provisions of the proposed rule, the comments received, our responses to the comments and the changes we made in response to comments are discussed below.

II. Summary of the Proposed Rule

Under the authority of section 1861(v)(1)(A) of the Act, we proposed to amend § 405.421(a) to establish a one year limit on the amount Medicare would reimburse a provider for the cost of approved educational activities. For cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986, a provider would be paid, under the terms of the proposed rule, a share (based on its Medicare utilization in the current year) of the lesser of its net allowable direct costs for medical education in the current year or the net allowable direct costs recognized by Medicare for the base year. If a provider's Medicare utilization increases after the base year, Medicare's payment for approved education activities in the limit year would be higher than the base year. Conversely, if Medicare utilization decreases than Medicare's payment for these activities will decrease. We proposed that the base year should be the provider's cost reporting year that began on or after October 1, 1983 and before October 1, 1984. This year was chosen as the base year because it allows us to use the most recent data available. The limit, as proposed, would affect both Part A (Hospital Insurance) and Part B (Supplementary Medical Insurance) payments because the limit would be calculated based on the net cost of approved educational activities before these costs are apportioned between inpatient and outpatient cost centers.

As stated in the proposed rule (50 FR 21027) we intend to maintain Medicare payments for direct medical education for subsequent years at levels fiscally equivalent to the limits in this regulation.

III. Responses to Comments

During the comment period, we received comments on the proposed rule from 114 commenters including medical schools, hospitals, medical groups, hospital associations, and other professional associations. The comments and our responses to them are discussed below.

Comment: Several commenters questioned whether State and local communities and private philanthropies can or will assume a greater proportion of the costs of medical education. One

commenter observed that it is unreasonable to expect States to help to pay for the training of health care professionals beyond their own immediate needs in the absence of Federal subsidization. Some commenters remarked that the Federal Government should not consider making changes to Medicare's policy regarding reimbursement for medical education costs without first looking at the availability of other funding sources. Other commenters said that there is little incentive to seek philanthropic funding when Medicare offsets allowable costs by these funds.

Response: As noted in the preamble to our proposed rule, we believe that after 20 years of very generous support by the Medicare program, that it is time to implement the Congressional intent that local communities assume a greater role in the costs of medical education. We also believe that States and local communities will provide additional sources of funding for those programs that they consider necessary. We further believe it is unlikely that either local governments or private philanthropies will increase their support so long as the Federal government continues to provide virtual open-ended funding. In addition, in view of the estimated surplus of doctors projected in virtually all specialties by 1990, we do not anticipate that this proposed freeze will have an adverse effect on the supply of physicians.

In the prospective payment regulations published in the **Federal Register** on January 3, 1984, (49 FR 234), we eliminated the offset of restricted grants and gifts against provider costs effective with cost reporting periods beginning on or after October 1, 1983. Therefore, hospitals do have the incentive to seek philanthropic funding.

Comment: Several commenters pointed out that other third-party payors look to Medicare in determining their payment policy and, therefore, that the adoption of a Medicare limit on direct medical education costs could have far reaching effects on other sources of reimbursement. Some of these commenters expressed concern that providers might try to shift to other payors some of the costs not reimbursed by Medicare, in order to make up the loss in Medicare reimbursement.

Response: While it is possible that other third-party payors may take similar actions to limit payments for medical education programs, any such actions would be based on independent decisions. We have no control over actions taken by independent third-party payors in formulating their payment policies, nor are we attempting to influence their payment policies. Other third-party payors may choose to follow our example, ignore it, or make alterations in their payment policies entirely different from our policies. Similarly, while we expect providers to take some action to lessen the effects of Medicare's limit on their costs, these actions (in addition to being speculative) are not within our control. Moreover, we cannot dictate what actions other third party payors may take.

Comment: Many commenters stated that Medicare has a responsibility for training professionals to serve present and future Medicare beneficiaries. They expressed concern that our proposal to limit direct medical education costs would curtail the training of future practitioners.

Response: Medicare has traditionally reimbursed hospitals for the net allowable costs they incur for approved educational programs on the basis that these programs enhance the quality of patient care provided in a hospital. Under the terms of this final rule, Medicare will continue to pay over $1 billion for the costs of graduate medical education. However, we have determined that for the next year increased support is not necessary for the efficient delivery of health services to Medicare beneficiaries. Also, we believe that the time has come for the community, including medical schools as well as State and local governments, to pay a greater share of these costs and to encourage hospitals to be more cost conscious in their decisions regarding the scope of their graduate medical education programs.

Comment: Some teaching hospitals claimed that they have a mix of patients within certain diagnosis related groups (DRGs) who require more intensive care and longer stays and, thus, these hospitals incur higher costs in caring for these patients than non-teaching hospitals. Other commenters noted that teaching hospitals serve a disproportionate share of patients with low incomes or minority patients. Consequently, a curtailment in Medicare reimbursement for medical education will place a particularly heavy financial burden on these hospitals.

Response: We have seen no conclusive evidence indicating that teaching hospitals are more likely to encounter more expensive cases within particular DRGs than similar nonteaching hospitals. The Rand Corporation is engaged in a study to determine whether there are significant severity of case differences among different types of hospitals. This study is expected to be completed by December 1985. We also do not yet have accurate data on whether hospitals serving a significantly disproportionate number of low income patients (whether or not members of minority groups) experience higher Medicare costs per case due to the provision of care to these patients. In any case, the direct costs of approved educational activities are reimbursed by Medicare outside of the DRGs because these costs are incurred only by certain hospitals, not because of the intensity of care that patients receive in these hospitals. If teaching hospitals do have higher costs than nonteaching hospitals, that are not covered by the pass through for direct medical education costs, then these higher costs are recognized in the indirect medical education adjustment authorized under section 1886(d)(5)(B) of the Act, which is not affected by this rule. In addition, section 1886(d)(5)(A) of the Act provides additional payments for hospitals that have cases known as "outliers", that either are extraordinarily long or costly compared to most discharges classified in the same DRG. Teaching hospitals receive a large portion of outlier payments that helps them to recover some of the additional costs of these cases.

Comment: Many commenters stated that it would be inappropriate to change Medicare's long-standing support for medical education through regulations rather than by statute, and asked us to delay the regulations until the Congress has considered legislation. Some commenters suggested that we delay action on this issue until Congress has reviewed the area of health manpower.

Response: Except for the services of interns and residents, there is no statutory provision requiring Medicare to pay for the direct costs of medical education. Medicare has authorized payment of a share of these costs by regulation because the Congressional committee reports that accompanied the original Medicare legislation, the Social Security Amendments of 1965 (Pub. L. 89-97) suggested that Medicare should share in these costs initially with the expectation that the community will later assume the costs of medical education. It is our belief that, after many years of generous support for medical education, for which there was no statutory requirement, it is appropriate for us to use the regulatory process to alter the amount of reimbursement by placing a limit on the overall reimbursement of direct medical education costs.

Although we are statutorily mandated under sections 1861(b)(6) and 1832(a)(2)(B)(i) of the Act to reimburse hospitals for the services of interns and residents, our payment for these costs is

subject to the general limitations described in section 1861(v)(1)(A) of the Act, which excludes payments for costs that are unnecessary in the efficient delivery of needed health services to Medicare beneficiaries. It is our belief that, in light of the current surplus of physicians in certain specialties and the low inflation rate, it is unnecessary for hospitals to increase the aggregate costs of their training programs in order to provide services of adequate quality to Medicare patients. Thus, under the authority of section 1861(v)(1)(A) of the Act, we believe a limit on Medicare reimbursement for direct medical education costs is warranted.

While a number of members of Congress have introduced bills dealing with medical education, it appears these bills have the effect of ending the practice of open-ended funding of direct medical education. Current law enables us to limit reimbursement to those costs that are necessary for the efficient delivery of health services. If and when Congress takes legislative action, we will make any necessary changes in our policy.

Comment: Several commenters stated that selection of cost reporting periods beginning during Federal fiscal year (FY) 1984 as the base year upon which the limit is based is arbitrary. One of these commenters questioned how Medicare reimbursement for direct medical education costs during the base year compared with other years.

Response: We selected cost reporting periods beginning during FY 1984 as the base year, which is the first year of the prospective payment system, because they are the most recent cost reporting years which will be available when this final regulation becomes effective. Preliminary data show that compared with previous cost reporting years, Medicare payments for approved medical education programs during this period will be greater than in any other comparable period.

Comment: Many commenters pointed out that the proposed policy change does not take into account situations in which hospitals have made prior commitments to faculty and students, or made decisions, prior to the publication of the proposed rule, to increase their educational programs effective for years after the base year.

Response: We do not believe that the effects of a one year limit will severely jeopardize existing programs. The Medicare program will still be making substantial payments for direct medical education costs. We believe that it is inevitable that, when limits are applied to payments, some providers will be disadvantaged because they have made previous commitments to pay certain costs that may be in excess of the limits and thus not reimbursed. However, if we waited until there were no hospitals that wished to expand their programs, the costs of medical education would continue to rise with little consideration being given to the *efficient* delivery of needed services to Medicare beneficiaries. Since the period to which the limit will apply has not yet begun, we believe that hospitals have the opportunity to reduce overhead costs and thereby minimize the impact of the limit without cutting faculty and student programs. We believe that it is time for hospitals to realize that they cannot continue to expand their educational programs assuming that there will be virtually unlimited funding from the Medicare program.

Comment: Several commenters recommended as an alternative to the proposed rule that we eliminate support for graduates of foreign medical schools.

Response: We do not wish to eliminate Medicare payments for graduates of foreign medical schools at this time because the elimination of payments for these graduates could have a disproportionately adverse effect on those hospitals and specialties, such as physical and rehabilitative medicine, that depend to a great extent on these graduates.

Comment: Some commenters expressed concern that our proposal on direct medical education costs is not simply a limit on medical education costs but constitutes a rollback of costs for some providers. These commenters maintain that those hospitals whose base year cost reporting period began before July 1, 1984, fare worse under the limit than those hospitals whose base year cost reporting period began between July 1, 1984 and September 30, 1984.

Response: We recognize that the limit on direct medical education costs may have differing impacts on hospitals depending on the month in which their cost reporting period begins. For some hospitals the limit will be effective at the start of their third year under the prospective payment system, while other hospitals will have the limit effective for their second prospective payment year. In response to public comment on this issue, we are amending § 405.421(a) to provide for an adjustment to the net allowable costs of those hospitals whose base year precedes the limit year by two years to reflect inflationary changes between the base year and the year prior to the limit year. We explored a number of alternative approaches that could be used to update these net allowable costs before selecting the approach we will use. We decided to allow hospitals whose cost reporting periods began during the period from October 1983 through June 1984 to have their base year costs adjusted to reflect changes in the Consumer Price Index for All Urban Consumers (CPI–U). The CPI–U includes the cost of salary increases for interns and residents and we believe it represents a suitable factor for updating base-year costs. The updating factors to be used are based on annual changes in the CPI–U and are presented below in part IV of this preamble. The following example demonstrates how the updating process works. A hospital whose base year cost reporting period began October 1, 1983 had net allowable costs of $1 million for approved education activities for its base year, an updating factor of 4.20% would be applied to these costs. Thus the hospital's base year costs for approved education activities would be updated to $1,042,000 ($1 million × 104.2%). Those hospitals whose base year cost reporting period began in the month of July, August or September 1984 will not have their costs updated, since their base years occurred immediately prior to the year to which the limit applies.

Comment: Many commenters noted that our proposal limiting payments for direct medical education costs does not provide for any market basket or inflationary increases in the medical education area or for changes in volume. One commenter also noted that by not including a provision for inflationary increases, we are suggesting that the costs for the base year were reasonable for efficient care, but that cost increases for the current year are unreasonable even if caused by inflationary factors beyond a hospital's control.

Response: Other than to provide for an adjustment for those hospitals whose base year precedes by two years the cost reporting period to which the limit will apply, as explained above, we are not providing for any adjustment to recognize inflationary increases because we do not believe that such an adjustment is appropriate. We believe that inflation over the years for graduate medical education has increased faster than the overall rate of inflation, and that a one-year limit on these costs would reduce some of this difference rather than leaving hospitals behind the growth of inflation. We believe that any increase in Medicare reimbursement above the base year level, other than for changes in Medicare utilization, which is taken into consideration, would not be necessary in the efficient delivery of health services to Medicare

beneficiaries. During the year for which these limits apply, we do not believe that a failure to recognize general inflationary increases will have a significant adverse impact on hospitals.

Comment: One commenter stated that a limit applied to individual hospitals indicates a misunderstanding of the functioning of the marketplace of residency slots and individuals seeking to fill them. This commenter suggests that, because of year-to-year fluctuations in the number of resident slots filled in a particular hospital, it would be better to allow each hospital to pass through the costs associated with its average salary paid in some base period multiplied by the number of filled resident slots.

Response: The limit we are imposing on direct medical education costs applies not only to the salaries of interns and residents, but also to the costs of approved nursing and paramedical programs, overhead costs of approved programs, and certain teaching-related compensation costs of physicians. We believe that our current approach of imposing a one-year limit on direct medical education costs is adequate for the short run. We believe this approach allows providers enough flexibility in managing their medical education programs to lessen the problem raised by the commenter, and is relatively simple to administer.

Comment: One commenter suggested that, instead of imposing an overall limitation on direct medical education costs, we control the volume of growth and the percentage of growth. This commenter recommended that we conduct a study on the types of education within medical specialties. This commenter further recommended that we impose tougher licensing requirements on graduates of foreign medical schools.

Response: We expect that an overall limit on Medicare's payment for direct medical education costs will help to control the volume and percentage of growth in the numbers of physicians and nurses. We believe that an advantage of imposing an overall payment limitation to these costs, rather than the imposition of strict criteria to control growth, is that the use of an overall payment limitation permits hospitals and the medical profession freedom to determine how to keep costs within the limit.

As to the commenter's recommendation that we study the types of education required for the various medical specialties, it is our belief that such a study would not provide us with a significantly better understanding of the costs of graduate medical education and the impact that a limit on these costs would have on medical specialties.

Finally, concerning the commenter's recommendation that we impose stricter licensing requirements on graduates of foreign medical schools, we note that the licensing of physicians is a function of the States. Neither the Federal Government nor the Medicare program have the authority to impose additional requirements on States in this regard, or to alter existing State standards for licensing physicians.

Comment: One commenter noted that the application of reasonable compensation equivalents (RCEs) to the salaries of teaching physicians provides a sufficient incentive to hospitals to limit their expenditures for medical education.

Response: The enactment of the prospective payment system sharply curtailed the application of RCEs to hospitals. RCEs apply only to the compensation costs providers incur for the services of physicians furnished to a provider that are not payable through the prospective payment system. While teaching physician costs are included under RCEs, the RCEs do not affect most costs associated with medical education programs. Therefore, we believe that an additional effort should be made to control these costs and that, consequently, the limit on direct costs of medical education is justifiable.

Comment: One commenter pointed out that section 1833(a)(2)(B) of the Act requires outpatient services to be reimbursed at 80 percent of reasonable costs. This commenter claimed that our proposal limiting direct medical education costs ignores the intent of Congress in enacting this section of the law. Another commenter expressed the belief that our proposal will have an impact on those hospitals that are shifting services to the outpatient setting, since outpatient costs are already being reimbursed at 80 percent of reasonable costs.

Response: Under section 1833(a)(2)(B) of the Act, Part B payments for approved medical education activities are limited to the lesser of the reasonable costs for these services or the customary charges for these services less applicable copayment amounts, but is no case may payment exceed 80 percent of reasonable cost. Because we are authorized by section 1861(v)(1)(A) of the Act to impose limits on reasonable costs we do not believe that our proposed limit is in any way contrary to section 1833(a)(2)(B) of the Act. Hospitals are allowed to bill Medicare beneficiaries for coinsurance amounts at 20 percent of charges, as well as any unmet Part B deductible amounts. The limit on direct medical education costs will be applied to the net cost of approved education activities before these costs are apportioned to inpatient or outpatient cost centers.

Comment: One commenter noted that the proposed rule provided no insight into the costs that HCFA believes are unreasonable and provided no rationale for its opinion that these costs are unreasonable. Another commenter indicated that without specific statutory authority the proposed rule changes the definition of reasonable costs by arbitrarily capping reimbursement for direct medical education costs.

Response: We did not state that costs incurred by individual hospitals for medical education are necessarily unreasonable. Rather we stated that, based on section 1861(v)(1)(A) of the Act, HCFA has authority to establish limits on reasonable costs based on estimates of the costs *necessary* in the efficient delivery of health services to Medicare beneficiaries. We believe that the current policy does not provide adequate incentive to providers to hold costs down, that Congress did not intend that Medicare should indefinitely reimburse a full share of direct medical education costs and that the surplus of physicians indicates that a portion of the direct medical education costs is not necessary in the efficient delivery of health services to Medicare beneficiaries.

Comment: Some commenters urged that the limits be implemented for only one year.

Response: This final rule specifies that this limit will be in effect for one year.

Comment: One commenter agreed that the Graduate Medical Education National Advisory Committee (GMENAC) study referred to in the proposed rule reflected their own experience as to the availability of physicians. Some commenters claimed that there is a maldistribution of certain specialties in rural areas that must be considered in future medical education planning.

Response: We do not believe that the distribution of the available surplus of physicians in various specialties is dependent upon the amount of Medicare payment for medical education. To the extent that providers respond to this change in payment by deleting certain residency programs, the total number of physicians trained in each specialty may change. However, the geographic distribution of medical personnel will still depend upon the individual physician's decision. Hospitals in rural areas will have the same chance to provide employment incentives to

physicians in different specialties that are available under current payment mechanisms.

Comment: One commenter said that the statement in the proposed rule that the number of registered nurses (RNs) increased by 83 percent in the period between 1970 and 1982 is misleading. Although the number of RNs did increase during these years, this was a response to vigorous recruiting campaigns to remedy a severe shortage of RNs in the industry. Additionally, the need for RNs to serve the Medicare population will increase as the percentage of elderly in the total population increases.

Response: We recognize that there are a number of reasons for the dramatic increase in the number of RNs in this period. As we stated in the preamble of the proposed rule, we will continue to review the entire area of graduate medical education.

Comment: Some commenters stated that the numbers and types of available residency programs should be decided by the medical profession and not by HCFA. They expressed concern that our proposal would threaten the quality of health care by selectively reducing particular types and numbers of residency programs, and interpreted our proposal as an attempt to decrease the number of physicians.

Response: There is nothing in this rule that dictates the numbers or types of residency programs that should be available. In the regulatory impact analysis of the proposed rule we stated that we specifically rejected the option of identifying and attempting to control surplus specialities. Our goal is to avoid having Medicare pay for costs that are determined to be unnecessary in the efficient delivery of health care to Medicare beneficiaries. Training large numbers of additional physicians when there already is a surplus of physicians will result in payment for unnecessary costs. We believe that the imposition of a one year limit on direct medical education costs will not affect the quality of health care. The proposed rule cited the surplus of physicians as one reason why the quality of health care should not be affected by a one year limit on these costs.

Comment: Two commenters noted that the proposed rule states that 53 percent of total medical education costs are paid to teaching hospitals in two of the nine census regions—the Mid-Atlantic and the East-North Central regions. They pointed out that the economic recovery in these two areas is lagging behind the nation's economy as a whole, and that State and local governments in these areas are not in a position to increase their funding for direct medical education costs to make up for reduced Federal funding.

Response: In the regulatory impact analysis for the proposed rule, we noted that the impact of a limit on direct medical education costs would vary depending on whether a hospital was located in an urban area versus a rural area and the census region the hospital was located. The impact would also vary depending on the number and types of programs affiliated with each hospital, the rate of growth in a hospital's medical education costs, and the action each hospital takes to control the costs of its programs. Thus, we are aware that certain hospitals will be more significantly affected than others.

These commenters' statements imply that adjustments should be granted to the two census regions where the majority of medical education costs are paid because of economic conditions that are unique to those areas. While we understand the commenters' concern, we do not believe that these economic factors should be considered in establishing policies for a national health care program. If adjustments were allowed for the reasons the commenters cite, then similar arguments could be presented for additional adjustments in other areas (such as hospitals with large graduate medical education programs compared to smaller programs) where the impact of the proposed limit will vary. We continue to believe, as expressed in the proposed rule, that the expected benefits of a limit on direct medical education costs to the Medicare program and the public outweigh the possible adverse effects on hospitals.

We also note that the two census regions cited as being most significantly disadvantaged by a limit have also been the regions most benefited by our generous payments for medical education in the past. Furthermore, a report published in February 1985, by the National Association of State Budget Officers and the National Governors' Association stated, "The strongest recovery (from the recession) is apparently experienced in the Great Lakes and most Mid-Atlantic States where the manufacturing sector was hard hit by the recession, but is now showing a strong recovery." Finally, since these are the regions with the greatest concentration of teaching facilities, it is our belief that they will continue to receive the greatest percentage of Medicare's payments for direct medical education costs, and for indirect costs as well.

Comment: Two commenters stated that base year costs should be retroactively adjusted when appeals of these costs are resolved in the provider's favor.

Response: If an appeal of base year costs is resolved in favor of a provider, we would increase the allowable base year costs for the purpose of applying the limit. Similarly, if the base year costs are reduced, the allowable direct medical education costs for the limit year would be decreased.

Comment: Several commenters requested that our policy change regarding reimbursement for direct medical education costs be delayed until a more definitive policy regarding health manpower levels is developed. One of these commenters stated that for the past three years the Department of Health and Human Services has been suggesting that State and local communities increase their share of responsibility for health education. This commenter recommended that the limit be delayed until October 1986 in order to ameliorate the impact on hospitals, States and local communities.

Response: We do not agree that the imposition of the limit should be delayed. As one commenter pointed out, we have been saying for over three years that the Federal Government should reduce its funding for medical education costs. The delay of the limit until October 1986 would continue the policy of paying for costs that are not necessary in the efficient delivery of health services to Medicare beneficiaries. A delay of the limit until October 1986 would necessitate the use of a later base year than the one proposed. A later base year would include many costs that result from inefficiency and would result in greater costs to the Medicare Trust Funds.

Comment: Some commenters said that, even though the proposed rule indicated that direct medical education costs are reimbursed at 100 percent of reasonable cost, Medicare's reimbursable share of these costs is substantially less than a provider's total cost for medical education. One commenter expressed concern that § 405.452 no longer applied for the purpose of apportioning education costs and stated that a new technique would have to be used. Another commenter remarked that there was no definition of Medicare utilization in the proposed rule and suggested that Medicare utilization be based upon adult discharges rather than Medicare days in order to prevent hospitals from being penalized for reducing Medicare days.

Response: The Medicare principles of reimbursement described in §§405.401–405.466 of our regulations will continue

to apply to direct medical education costs. These regulations describe the principles that are to be applied to determine Medicare's share of allowable cost. The intent of the proposed rule was to establish a one year limit on the amount Medicare will reimburse a provider for direct medical education costs. It was not the intent of the proposed rule to change the Medicare principles of reimbursement that apply to direct medical education costs.

The example used in the proposed rule (50 FR 21027) may have been overly simplified. The rate of Medicare utilization used in the example represented Medicare's overall share of allowable cost computed after applying the Medicare principles of reimbursement applicable to the various types of services rendered. It is the type of service (for example, ancillary, routine, or other service costs) that determines the Medicare principles of reimbursement that are used to determine Medicare's share of allowable costs. The example was intended to show that Medicare's liability fluctuates based on the utilization of services by Medicare beneficiaries and not to change the method of determining Medicare utilization. Thus, if a provider's Medicare utilization increased after the base year, its Medicare reimbursement for the limit year would be higher than the amount of reimbursement for the base year. Conversely, if the provider's Medicare utilization decreased subsequent to the base year, Medicare's reimbursement for the limit year would be proportionately less than the amount reimbursed in the base year. In addition, to the extent that hospitals operate a variety of medical education programs in the year that the limit applies and total allowable costs for those programs exceed the aggregate limit, Medicare's financial participation in each of those programs for the limit year will be based on the proportion of each program's share of total allowable direct medical education costs in the absence of the limit. The aggregate limit will be prorated based on these proportions. In implementing this policy we will ask the Medicare fiscal intermediaries to carefully compare the provider's base period cost report to their cost report for the year the limit applies.

Comment: Representatives of several teaching hospitals and medical schools noted that residents in teaching hospitals provide highly sophisticated medical care to Medicare beneficiaries at a reasonable cost. These commenters further noted that without residents it will be much more expensive for teaching hospitals to provide a high level of care.

Response: These commenters apparently believe that Medicare will cease to support medical education activities. As previously stated, under the limit we are imposing, Medicare will continue to make substantial payments for medical education activities. We are simply imposing a limitation on payments for these activities in the hope of encouraging hospitals to use their available resources more efficiently. We do not believe that most hospitals will drop their residency programs simply because Medicare imposes a one year limit on the reimbursement for these activities.

Comment: Some commenters stated that the application of a limit to the training of paramedical and nursing personnel presents special problems because of the difficulty in recruiting qualified personnel in these professions. These commenters claimed that our proposal would make it difficult for hospitals to continue the education process for these professions. One commenter supported the proposed limit, except this commenter did not believe that the limit should be applied to graduate nursing education programs and in particular should not be applied to nurse anesthetists.

Response: Under the limit we are imposing, Medicare will continue to pay hospitals for the costs incurred in connection with training programs for paramedics and nurses, including nurse anesthetists. Payment for these types of programs is made on a reasonable cost basis for provider-operated programs under the direct medical education pass through and through the DRG payment for the cost of those programs that a hospital participates in but does not operate. The limit we are imposing will simply rule out the recognition of increases in the costs of provider-operated programs.

Comment: One commenter stated that the proposed rule was incorrect in implying that there is an over supply of nurses. The commenter states that twice as many nurses with baccalaurate degrees and three times as many nurses with graduate degrees will be needed as compared to the supply available in the year 1990. This commenter also noted that nursing shortages exist in certain geographic areas, in various health care settings, within institutions, and in specialty nursing. A national organization questioned HCFA's reliance on the GMENAC report which projected a future surplus of physicians. This organization also pointed out that the GMENAC report did not address nursing or allied health personnel.

Response: We believe that the GMENAC findings regarding the supply of physicians is valid. We did not state in our proposed rule that there was an oversupply of nurses nor did we rely on GMENAC for projections regarding the supply of nurses or allied health personnel. Instead, we noted only that the percentage of registered nurses had increased by 83 percent during the period from 1970 to 1982. This data was based on the May 1984 Report to the President and Congress on the status of health personnel in the United States prepared by the Public Health Service. As previously stated, we think one of the major advantages to a limit as opposed to other alternatives is that a limit allows hospitals control in determining if any necessary cuts will be applied. We do not believe that a limit will have any impact on nursing shortages in the areas mentioned. Shortages of this kind will probably continue to exist regardless of the funding provided by Medicare or any other sources.

Comment: Some commenters noted that our impact analysis pointed out that urban hospitals will be affected significantly more than rural hospitals because urban hospitals now receive most of the Medicare expenditures for costs of medical education trainings programs and they also receive a higher average amount for their training programs. These commenters believe that urban hospitals can more readily absorb the cuts in Medicare funds whereas rural hospitals with smaller residency programs will be more severely affected by a limit. These commenters recommended that rural hospitals with single residency programs in primary care specialties should be exempted from the limit. One commenter noted that the primary care residencies will be most severely affected and this will adversely affect the maldistribution of physicians in rural areas.

Response: We do not with these commenters' suggestion that rural hospitals with single residency programs in primary care specialties should be exempted from the limit. We believe a limit must be applied to all teaching programs. To permit exceptions based on a hospital's location or the type of residency programs it administers would disadvantage other facilities and not be in keeping with our stated goal of only making payment for services that are necessary in the aggregate for the delivery of health services to Medicare beneficiaries. As we noted in the

proposed rule, to the extent that the community finds that additional support is required for medical education costs, it is essential that the community provide this support. Also, as stated in the proposed rule, we believe it would be intrusive and beyond our authority if Medicare were to attempt to identify surplus medical specialties and to impose limits by types of specialties.

Comment: One commenter pointed out the important role that interns and residents play in providing care to indigent and aged patients in teaching hospitals. This commenter said that the resultant physician charges are less than would be the case had an attending physician rendered the service.

Response: Medicare policy has long recognized the respective roles of attending phyicians and interns and residents in furnishing patient care in teaching hospitals. However, it has never been our understanding that the decision as to whether to treat individual patients by means of an attending physician directing a resident in patient care or to permit a resident to be the primary physician on a case was based on a patient's health insurance. The situation as has been presented to us by the graduate medical education community is that, in teachings hospitals, "attending physicians" involve interns and residents in the care of their patients. The attending physician personally examines the patient and is present when the intern or resident performs any major or complex procedure in the treatment of a patient. Because of this intimate involvement in the patient's care, Part B of Medicare pays for the physician's services as if the physician had actually performed the services. The level of payment made for attending physicians' services has historically been at the prevailing limit of charges made in the locality. We have not seen any data indicating that attending physician are not involved in the care of most Medicare beneficiaries, and would welcome any information on the extent to which interns and residents practice independently in cases in which no Part B charge is rendered.

Comment: One commenter stated that if funding for medical education must be withdrawn, it should be at the medical school level. This commenter believes that curtailing residency programs before curtailing the production of medical students will result in large numbers of partially trained physicians.

Response: The type of funding cited by this commenter comes from government programs other than Medicare and is outside the purview of this regulation. The Administration's proposed budget would cut these types of grants for the next fiscal year. However, we do not agree that several years should pass before there is any attempt to limit Medicare's costs for medical education programs. Further, the limit we are adopting applies to nursing and paramedical programs as well as graduate medical education, and we believe that hospitals should be able to choose where their priorities lie among the various types of educational activities.

Comment: One commenter recommended that we revise the limit in order to allow providers to convert clinic and emergency room visits to be treated as inpatient services for the purpose of determining the utilization adjustment.

Response: We do not believe it is necessary to revise that limit for the purpose of determining the utilization adjustment. Section 405.421(g) of our regulations describes the calculation of the net costs of approved educational activities. This section provides that total costs be reduced by tuition revenues. Once the net costs are determined in accordance with § 405.421(g), these costs are allocated to the appropriate patient care cost centers. The application of the limit we are imposing requires that the lesser of the allowable costs for the limit year or the base year is allocated to the appropriate patient care cost center.

Comment: Two commenters expressed concern that the proposed rule did not address situations in which providers may have implemented medical education programs after their base year began.

Response: We understand that there may be rare situations in which a provider's first medical education program began after the start of its base year. For example, a hospital with a cost reporting period that began January 1, 1984, initiated a program of training interns and residents in July 1984. In that situation, a part of the base year would not reflect medical education costs since the program was in effect only from July through December 1984. In response to public comments for those hospitals that started programs for the first time in either the base year or before July 1, 1985, we are amending the regulation to provide for possible exceptions to the limits. Only those hospitals that can document that they began their *initial* programs for medical education after their base year began may qualify for the exceptions. For those hospitals who are granted exceptions for new programs, we would establish a base year for the purpose of applying the limit based on the allowable costs incurred for the time that the new program existed. These base year costs would be adjusted as appropriate to make them comparable to the base year of other providers. This exception will not apply to providers that replace, add to, or expand existing programs.

Comment: One commenter questioned whether the proposed rule applies only to those hospitals that are paid under the prospective payment system.

Response: The limit would affect all hospitals that participate in the Medicare program who report direct medical education costs on their cost reports. Thus, hospitals excluded from the prospective payment system such as psychiatric and rehabilitation hospitals would also be subject to the limit.

Comment: One commenter recommended that all approved educational activities should be reimbursed based on 100 percent of reasonable costs regardless of the setting in which the training is furnished.

Response: This recommendation would require a change in the law. Section 1833(a) of the Act generally limits Medicare's reimbursement for outpatient provider costs to the lesser of 80 percent of reasonable costs, or customary charges not to exceed 80 percent of the reasonable costs.

Comment: One commenter noted that although we encourage training for geriatric health care, we have not provided any incentives, such as special funding, to encourage training in this area.

Response: As the proposed rule pointed out, we recognize that certain medical specialties are in excess of the national need while there are shortages in other specialties. However, we believe that identification of excess specialties within a particular hospital would be difficult administratively and would be intrusive to individual hospital operations. Therefore, we continue to believe that an overall limit applied equally to all approved medical educational activities is preferable. Because most of our beneficiaries are aged, we naturally encourage an increase in training for geriatricians. However, we have chosen not to provide special incentives for specific specialties because we continue to believe that individual hospitals should be free to manage their educational programs in order to meet the needs of the communities they serve.

Comment: One commenter noted that although the limit will be effective for only one year, the proposed rule suggests that it will be continued into the future or that some other form of

limit will be imposed. This commenter believes that this uncertainty makes it impossible for hospitals to make future commitments and plans for medical education programs.

Response: We are aware of the various problems facing hospitals because of the uncertainties regarding reimbursement for medical education that currently exist. As noted in the proposed rule, Congress is considering the entire area of financing medical education. We cannot forecast what actions Congress will take regarding reimbursement for medical education. It is because of the Congressional interest in this area that we decided to impose this limit for a one-year period. It is our belief that a one-year limit on these costs is an appropriate solution to the rising costs of medical education activities at this time, the benefits of which offset the perceived problem.

Comment: One commenter recommended that Congress establish a commission to study and recommend alternative sources of funding for clinical training programs. This commenter further recommended that we not finalize any regulations concerning reimbursement for medical education until the Congressional commission completes its study.

Response: As noted above, Congress is currently considering the issue of financing medical education. We are aware that other alternatives may be adopted or that legislation may be passed that will have an impact on our limit. However, we do not believe that possible future actions should delay our implementation of a one-year limit now. For the reasons cited in the proposed rule, we believe that the Medicare program is currently paying for costs that are in excess of those necessary for the efficient delivery of health care services to Medicare beneficiaries. Therefore, it is our belief that a limit on the amount Medicare reimburses a provider for direct medical education costs is necessary and proper at this time.

Comment: Some commenters recommended that more favorable treatment be given to those teaching hospitals whose graduate medical education programs emphasize training for primary care specialties rather than nonprimary care specialties. One commenter specifically suggested that we apply a limit only to those institutions that have not met a target ratio of primary care to nonprimary care specialty positions, and that the limit be applied only to the nonprimary care residency positions within that institution.

Response: As noted in the impact analysis of the proposed rule, we rejected this approach. We continue to believe that decisions as to the type and size of medical education programs within a particular hospital are best left to the individual hospital and to its medical staff. As to the commenter's suggestion regarding applying the limit only to those institutions that have not met a specific target ratio, we believe that the fact that a hospital's qualifying ratio could change several times over the course of a year would complicate reimbursement to an extent that this suggestion would not be justified by any favorable results that might be achieved.

Comment: Two commenters questioned our authority under section 1861(v)(1)(A) of the Act for promulgating the proposed cost limit. In particular, they claimed that it was necessary to follow the same procedures used in regulations which in the past imposed limits on routine inpatient operating costs pursuant to section 1861(v)(1)(A) of the Act. The commenters stated that these had identified specific costs subject to the limits, and had used statistical methods to define which costs were inefficient.

Response: Unlike previous limits on costs issued under the authority of section 1861(v)(1)(A) of the Act, which were concerned with the efficiency of each individual hospital, these limits are concerned with Medicare beneficiaries' need in the aggregate, for trained physicians and other health professionals. With the exception of the services of interns and residents, the Medicare statute does not require reimbursement of direct medical education costs at all. Rather, in accordance with a suggestion in the original legislation's committee report, Medicare has voluntarily shared in education costs incurred by hospitals.

The advent of the prospective payment system, together with the projected surplus of physicians and the fast rising costs of medical education in general, has focused our attention on direct medical education costs. Under the prospective payment system Medicare makes the same fixed payment to a nonteaching hospital as to a similarly situated teaching hospital to cover the operating costs of services rendered to a Medicare patient. In addition, however, Medicare makes further payments to cover the direct (and indirect) medical education costs of the teaching hospital. Since the basic payment is sufficient to provide adequate services to Medicare beneficiaries in the nonteaching hospital, a question is raised as to how the payment of direct medical education costs can be considered necessary in the efficient delivery of health services to Medicare beneficiaries.

Therefore, we have determined that at a minimum, this situation calls for limits that will stop the rapidly increasing cost of Medicare's contribution to medical education. Medicare's beneficiaries are more than adequately served by the present aggregate level of medical education and, we believe, would continue to be adequately served at the levels resulting from the limits we are adopting.

Comment: A number of commenters claimed that the proposed cost limit would not reduce the physician surplus, and that Medicare payment policy is not the appropriate vehicle for making policy with respect to manpower needs.

Response: It is not Medicare's purpose to control or reduce the surplus, or to limit the numbers of physicians or other health care professionals. This limit is addressing the specific Medicare purpose of not paying for costs which are necessary in the efficient delivery of services to Medicare beneficiaries.

Comment: A number of commenters stated that the 30 day comment period was not enough time for public comment, and that HCFA has allowed itself insufficient time in which to review and evaluate public comments carefully.

Response: We believe that it is necessary to impose a limit on medical education costs as soon as possible. A delay in the effective date, in order to provide additional time for public comment, would have an adverse impact on the Federal Government's duty to assure that only necessary and proper payments are made. Were we to delay the implementation of this limit, our experience indicates that the absence of constraint would result in the continued escalation of the cost of medical education programs. This would result in further payment for costs that are not necessary for the efficient delivery of services to Medicare beneficiaries. We believe that we have given careful consideration to all comments that we received on the proposed rule, and therefore, we are confident that we had sufficient time to evaluate all public comments.

IV. Summary of Changes to the Proposed Rule

Based on comments received and other considerations, we are making the following substantive changes to the proposed rule.

We are amending the limit as proposed in § 405.421(a)(2), to provide

an adjustment to the net base year costs of those providers whose base year cost reporting year began before July 1, 1984. These providers will have their net base year costs updated to reflect changes that occurred in the CPI–U in their base years. Without this change, a provider whose cost reporting period begins January 1, 1986, would have had its costs limited to the costs it incurred for the period January 1, 1984 through December 31, 1984 (that is, two years previously). None of the costs incurred by this provider in 1985 would have been considered. In view of the fact that 1985 costs in general were higher than 1984 costs, this provider would have had its costs rolled back to 1984 levels. However, if the provider's cost reporting period had begun July 1, 1985, its costs would have been limited to those costs incurred for the base year July 1, 1984 to June 30, 1985 (that is, the year preceding the limit year). Thus, the July provider does not experience a rollback of costs as is experienced by the January provider. In order to ameliorate this situation, we have revised the limit provision by allowing an adjustment to base year costs for those providers whose base year cost reporting period began during the period October 1983 through June 1984. The base year costs of these providers will be updated to reflect the increase in the overall rate of inflation that existed during the base year.

The updating factor is tied to changes in the CPI–U, a generally accepted measure of inflation. It is our belief that the CPI–U is an appropriate means of updating costs for direct medical education because this index includes the salaries of professionals, clerical workers and blue collar workers. Another reason for using the CPI–U is that a large proportion of direct medical education cost increases are attributable to stipends paid to interns and residents.

The base year costs will be adjusted using an updating factor tied to the month the base year cost reporting period began. Included below are the updating factors that will be used. As indicated, the factor for a cost reporting period beginning on June 1, 1984 and ending on May 31, 1985 will be supplied to the intermediaries as soon as we have the information for the CPI–U.

Cost reporting period	Update factors
10/1/83 to 9/30/84	4.20
11/1/83 to 10/31/84	4.03
12/1/83 to 11/30/84	3.95
1/1/84 to 12/31/84	3.57
2/1/84 to 1/31/85	3.52
3/1/84 to 2/28/85	3.74
4/1/84 to 3/31/85	3.66
5/1/84 to 4/30/85	3.75
6/1/84 to 5/31/85	(1)

[1] To be supplied.

We have also added a new provision to § 405.421(a)(2) that will allow us to recognize costs incurred by providers who initiated approved educational programs for the first time after the beginning of their base year. This provision will apply to those providers that initiated medical education programs after the start of their base year but before July 1, 1985. Under this provision we will apply the limit using a base period adjusted in order to be reasonably comparable to the base year applicable to other providers, that will take into account the costs incurred for the approved educational programs. If a provider's cost reporting period reflects medical education costs for a period less than a full year, we will adjust these costs for the purpose of making them comparable to the costs of other providers with a full year's cost in their base period. Thus, these providers will not be disadvantaged by the fact that their programs were not in operation during the full base period. This provision will not be applied to providers who expand or add to existing programs.

V. Regulatory Impact Analysis

A. Introduction

In developing a final Regulatory Impact Analysis, Executive Order 12291 requires us to publish an analysis that discusses relevant costs, benefits, and alternatives considered. For purposes of this final rule, we are presenting the impact analysis contained in the proposed rule, as it clearly addresses these issues. Additionally, we are publishing an updated budget savings estimate that reflects our adjustment of the net base year cost of those providers whose base year cost reporting period begin before July 1, 1984. Finally, section 604 of the Regulatory Flexibility Act (5 U.S.C. 604) describes the requirements for preparing a final regulatory flexibility analysis. We believe that the final regulatory impact analysis provided below, together with the rest of the preamble, meets the requirements of both the Executive Order and the Regulatory Flexibility Act.

We have determined that this final rule is a major rule because the budget impact will exceed $100 million annually. Furthermore, as noted in the proposed rule, we have determined that a substantial number of participating providers with graduate medical education programs for interns and residents, nurses, or certain paraprofessionals will be affected significantly by this final rule, to a degree dependent on the interaction of several considerations.

B. Background

Historically Medicare has paid for a share of providers' costs associated with medical education programs. Under the prospective payment system, we have been reimbursing hospitals on a reasonable cost basis for Medicare's share of their direct medical education costs. This payment is in addition to their prospective payments. Hospitals that are excluded from the prospective payment system (for example, phychiatric hospitals and rehabilitation hospitals) are also reimbursed on a reasonable cost basis for approved medical education programs.

We estimate that in Federal fiscal year (FY) 1984 there were Medicare expenditures of $1.127 billion to 1660 hospitals for their direct medical education costs. Ninety-seven percent of the payments were received by urban hospitals with more than 100 beds. Fifty-three percent of total direct medical education expenditures were paid to hospitals in two of the nine census regions: The Mid-Atlantic region (New York, Pennsylvania and New Jersey) and the East North Central region (Illinois, Michigan, Wisconsin, Ohio and Indiana).

C. Costs and Benefits

1. *Provider Costs.* The limit imposed by this final rule will affect all participating hospitals reporting direct medical education costs on their cost reports. We estimate Federal savings of $125 million in FY 1986 as a result of implementing the limit on our payment for Part A and Part B direct medical education costs. The projected savings represent the difference between estimated expenditures absent the limit and estimated expenditures under the limit. While the estimated savings represent a very small percentage reduction in Medicare's total payments to hospitals, the FY 1986 projected savings represents an estimated eight percent reduction in the estimated $1.560 billion in payments that hospital medical education programs would receive in FY 1986 absent this limit.

The impact on an individual hospital will vary depending on the interaction of several factors. First, our data show that urban hospitals will be affected significantly more than rural hospitals with similar training programs. This is due to the fact that urban hospitals receive most of the Medicare

expenditures for the cost of these training programs, and that urban hospitals also receive a higher average amount of reimbursement for their programs, a related factor in determining the potential impact on individual hospitals is the location of a hospital among the nine census regions. We noted that our cost report data show a marked differential impact among the census regions, with hospitals in the Mid-Atlantic and East North Central regions along receiving 53 percent of Medicare expenditures for medical education programs. Due to the variations in training expenses as well as amounts of reimbursement received by hospitals in each region, we believe that this rule will result in differential impacts on hospitals among and within the nine census regions.

Finally, we believes that the limit will affect hospitals differently depending on the amount of reimbursement to each hospital, the number and types of programs affiliated with each hospital, the rate of growth in their medical education costs, and the actions they have been taking to control the costs of their training programs. Many hospitals report costs for the maintenance of one type of training program, usually for physicians. About one-quarter of affected hospitals report costs for a combination of two types of training programs, primarily physician and nursing school combinations. Limiting our payment to affected hospitals may lead to changes in numbers of programs, their size or their specialty make-up. However, we are unable to predict what specific actions affected hospitals will take in response to this payment limitation.

2. *Program Benefits.* In the proposed rule, we noted that although this rule may have at least a temporarily adverse economic impact on affected hospitals, we believe that significant benefits to the Medicare program will result. In addition to avoiding payment of unnecessary costs, we believe that by limiting our reimbursement, current fiscal incentives will be modified to encourage greater attention to the appropriateness of educational activities being undertaken and to the development of more cost-effective approaches to medical education activities. The present cost reimbursement methodology does not adequately ensure that unnecessary costs are not incurred in providing medical education. Further, costs that are not constrained by some form of limit, continue to increase more rapidly than costs that are subject to a limits such as the section 223 limits or the prospective payment system. Therefore, one effect of the limit contained in this rule will be to permit more prudent management of the Medicare Hospital Insurance Trust Fund by changing current fiscal incentives that create unnecessary expenditures.

3. *Provider Benefits.* We believe that after 20 years of program experience, States and localities, medical schools, and private philanthropy should assume more responsibility for the costs of medical education as was originally intended by Congress. We believe that the limit contained in this rule will provide an incentive for the medical education community to examine its priorities and begin to restructure residencies and other programs for health professional other than physicians to meet the changing environment of the health care market place. We believe that greater attention to the training of geriatric health care professionals is important, and urge the medical education community to consider the needs of our aged beneficiaries.

This final rule continues our participation in medical education programs, although limited to recent levels, rather than at the increased levels projected without this rule. Though we are limiting our reimbursement, we will continue reimbursing providers for a portion of their incurred direct medical education costs.

D. Alternatives Considered

In preparing a final regulatory impact analysis and regulatory flexibility analysis, we are required to describe significant alternatives that could achieve the same goal and the reasons for not adopting these alternatives. One option we considered in the proposed rule was continuing the current policy concerning direct medical education costs. However, this approach would have continued the excessive reimbursement and inappropriate incentives of the current system, and would be contrary to the Administration's effort to control the rate of increase in Medicare expenditures and still provide high quality care to beneficiaries. The incentives inherent in the current approach invariably lead to paying for unnecessary costs incurred in the delivery of health care services. We believe, therefore, that the current approach to paying hospitals for medical education costs needed to be changed.

A second alternative we considered was to pay only for the services of interns and residents. This option was rejected due to the difficulty of identifying such costs on the cost reports discretely from other direct costs of medical education, and because we believe that an overall payment limitation gives providers more flexibility while providing adequate protection to the Medicare Hospital Insurance Trust Fund. However, for the future, we may revise the cost reporting form to elicit discrete data on costs for interns and residents.

A third alternative we considered was to control the rate of increase in Medicare expenditures for medical education by paying for these costs under the prospective payment system. However, the requirements stated in section 1886(a)(4) of the Act, precluded us from doing this.

A fourth alternative that we considered was to reduce Medicare's contribution to the medical educational costs of specialties considered to be in excess of national needs. The geographic distribution of physician specialists is variable making the identification of surplus specialties problematic at the national level. Consequently, we believe that a limit on overall payment for medical education costs, which allows individual hospitals to manage their educational programs in ways they believe best meet the needs of their patients and the local community, is far superior to our attempting to identify surplus specialties or to determine the appropriate size and nature of specific medical education programs. This latter approach would have been unduly intrusive and could, for example, involve the setting of quotas.

E. Summary

As noted in the introduction to this analysis and in the proposed rule, we conclude that the annual economic impact of this rule will significantly affect a substantial number of providers and medical schools and will result in an annual economic impact exceeding $100 million annually. However, we believe that the expected benefits to the program and the public will offset costs incurred by the providers and that, based on a consideration of alternatives that could achieve the same goal, we believe this final rule maximizes net benefits to affected parties while including the least net cost to society in general. Therefore, for the reasons stated in this analysis, we believe that this rulemaking adheres to the intent of Executive Order 12291 and the Regulatory Flexibility Act.

F. Paperwork Burden

The changes contained in this rule do not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

VII. Other Required Information

A. Waiver of Delayed Effective Date

Although we are not required to publish our rules 30 days before their effective dates, we customarily do so. However, we believe that in this case, the public interest requires that these regulations be effective July 1, 1985, without a 30-day delay in effective date. The revisions to §§ 405.421 and 412.113, imposing a limit on Medicare's reimbursement for a provider's direct medical education costs, are effective for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986. We have a duty to administer the Medicare Trust Funds in a manner that precludes payment for costs that are unnecessary in the efficient delivery of health services to Medicare beneficiaries. In this light, we believe that a limit on Medicare reimbursement, as discussed above, is justifiable and, in order to gain the greatest benefit to the Trust Funds, must be implemented as soon as possible. In addition, all providers and intermediaries affected by this limitation were notified by the May 21, 1985 proposed rule (50 FR 21026) of our intention to limit these costs for those cost reporting periods. Therefore, we believe further delay in the effective date is unnecessary and contrary to the public interest and we find good cause to waive the delay in the effective date of this final rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMOs), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Cancer hospitals, Christian Science sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment referral centers, Renal transplantation centers, Sole community hospitals.

42 CFR Chapter IV is amended as set forth below:

A. Part 405, Subpart D is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 1101, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. Section 405.421 is amended by revising paragraph (a) to read as follows:

§ 405.421 Cost of educational activities.

(a) *Reimbursement*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, a provider's allowable cost may include its net cost of approved educational activities, as calculated under paragraph (g) of this section.

(2) *Limit applicable to cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986.* (i) For cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986, a provider's net cost of approved educational activities, as calculated under paragraph (g) of this section, incurred during a cost reporting period is limited, under the authority of section 1861(v)(1)(A) of the Act, to the lesser of the provider's net cost of its program—

(A) For that cost reporting period; or

(B) For a base year that consists of the provider's cost reporting period that began on or after October 1, 1983 but before October 1, 1984. For providers whose cost reporting periods began during the months of October 1983 through June 1984, the provider's net cost of its program is adjusted by an updating factor. The factor is based on the increase in the overall rate of inflation, according to the Consumer Price Index for All Urban Consumers, that occurred during the provider's base year.

(ii) For providers that did not have approved educational activities as of the first day of the cost reporting period that would otherwise be its base year defined in paragraph (a)(2)(i)(B) of this section, and that initiated such activities after the first month of that cost reporting period, but prior to July 1, 1985, we will establish a base period for applying the limit described in this section. The base period will include allowable costs the provider incurred for approved educational activities prior to July 1, 1985, adjusted in order to be reasonably comparable to the base years of other providers.

(3) *Apportionment.* Once the net cost is determined under this section, it is subject to apportionment for Medicare utilization as described in § 405.403.

* * * * *

B. Part 412 is amended as set forth below.

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395ww).

2. Section 412.113 is amended by revising paragraph (b) to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

* * * * *

(b) *Direct medical education costs.* Payment for the cost of approved medical educational activities as defined in § 405.421 of this chapter is made on a reasonable cost basis (except with respect to activities defined in § 405.421(d) of this chapter). For cost reporting periods beginning on or after July 1, 1985, but before July 1, 1986, payment for these reasonable costs is limited as described in § 405.421(a) of this chapter. For cost reporting periods beginning before October 1, 1986, the costs of medical education must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the transition payment rate in Subpart E of this part.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 27, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 28, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-15964 Filed 7-1-85; 9:37 am]

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Friday
July 5, 1985

Part IV

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Limits on Home Health Agency Costs per Visit for Cost Reporting Periods Beginning On or After July 1, 1985

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-278-FN]

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1985

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice sets forth a schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program. The schedule is an update of the limits to take into account more recent data and the effects of inflation on HHA operating costs, and it applies to HHA costs for entire cost reporting periods beginning on or after July 1, 1985. The notice also explains the revised methodology for computing the cost limits for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1988.

EFFECTIVE DATE: The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986. The revised methodology for computing the limits is effective for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1988.

FOR FURTHER INFORMATION CONTACT: V. Judith Thomas, (301) 594-9234.

SUPPLEMENTARY INFORMATION:

I. General Information

In the **Federal Register** on May 14, 1985 (50 FR 20178), we issued for public comment a proposed schedule of limits on HHA costs that may be reimbursed under the Medicare program, effective for cost reporting beginning on or after July 1, 1985. In addition, we requested public comments on proposed changes to the methodology we use to calculate the limits beginning on or after July 1, 1985 and before July 1, 1988.

In this notice, we are issuing the final schedule of cost limits effective for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986. In addition, a summary of the comments we received on both the proposed limits and the proposed changes to the methodology, and our responses to those comments, are presented below.

II. Limits on HHA Costs

Section 1861(v)(1) of the Social Security Act (the Act) authorizes the Secretary to set prospective limits on allowable costs incurred by a provider of services that may be reimbursed under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 405.460.

Under this authority, we have maintained limits on home health agency (HHA) per visit costs since 1979. The schedule set forth below replaces the schedule that we published in the **Federal Register** on July 2, 1984 (49 FR 27272), which was applicable to cost reporting periods beginning on or after July 1, 1984 through cost reporting periods beginning June 30, 1985.

In developing the limits contained in this schedule, we proposed four changes to the methodology that was used for the schedule of limits effective July 1, 1984.

III. Provisions of the Proposed Limits

A. Continuing Provisions

The proposed schedule of limits provided for continued use of methodology that had been used in prior HHA costs limit notices as follows:

1. MSA/NECMA Classification System

The classification system is based on whether an HHA is located within or outside a metropolitan statistical area (MSA) or New England county metropolitan area (NECMA), as defined by the Executive Office of Management and Budget. These designations are the same as those used for the July 1, 1984 schedule except for the following:

- Two new urban areas have been added: Naples, FL (comprised of Collier County) and Santa Fe, NM (comprised of Los Alamos and Santa Fe Counties).
- The Kansas City, KS and the Kansas City, MO urban areas have been combined into one urban area, the Kansas City, MO-KS area.
- The Alton-Granite City, IL, the East St. Louis-Belleville, IL, and the St. Louis, MO-IL urban areas have been combined into one urban area, the St. Louis, MO-IL area.

2. Use of an Add-on Adjustment for Hospital-Based HHAs

The proposed notice provided for an "add-on" adjustment of the freestanding HHA limit for each hospital-based discipline to account for the higher costs associated with Medicare cost-finding requirements for administrative and general (A&G) costs.

3. Use of HHA Market Basket Index

An input price (market basket) index was developed from the price of goods and services purchased by HHAs to account for the impact of changing labor and price levels on HHA costs. The market basket index was first introduced effective July 1, 1980, and is used to adjust HHA cost data to the midpoint of the first cost reporting period to which the limits will apply. (The midpoint of a cost reporting period beginning July 1, 1985 is December 31, 1985.)

4. Adjustment of the Limits for Inaccurate Economic Forecasts

We proposed to adjust the limits retroactively if the estimated market basket index rate differs from the actual rate by more than 3/10 of one percentage point.

5. Use of a Wage Index for Adjusting HHA Cost Data

A wage index, developed from 1982 hospital wages, was used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas in which HHAs are located. The employee wage portion of the market basket index and the employee benefits portion of the market basket, plus a factor representing a proportionate share of contract services, were used to determine the labor component of all HHA per visit costs used to set the limits.

6. Use of Cost-of-Living Adjustment for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

We proposed to apply a cost of living adjustment to the nonlabor portion of the limits for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

B. Proposed Changes to the Methodology

In the proposed notice, we stated that the following changes to the methodology used in calculating the HHA cost limits would take effect July 1, 1985.

1. Elimination of Outlier Costs

The data base we used for the proposed notice was comprised of data from the second year of the single-method cost report. Reporting accuracy had increased significantly from the first year reports, probably due to a greater familiarity with the new cost reporting forms.

Despite the improved accuracy of the cost report data, we continued to find some per visit costs that were abnormal. Since these aberrant costs appeared to

result from errors in completing the cost report, we defined minimum and maximum outlier cost per visit values for each discipline.

We proposed to use an accepted statistical technique (logarithmic transformation) to normalize the distribution of per visit costs for each service. We proposed to eliminate those per visit costs that were more than plus or minus two standard deviations from the mean of the log-transformed cost per visit values. (For example, for the urban skilled nursing service group, we proposed to exclude costs above $118.65 per visit and below $20.67 per visit.)

2. Inclusion of "New HHA" Costs in Limits

In calcualating the July 1, 1984 schedule of limits, we excluded from the data base the cost per visit values for "new" agencies; that is, those agencies that had participated in the Medicare program for less than three full years. This was done to exclude the high costs that result from unique, nonrecurring expenditures in the initial years of an agency's operation.

In subsequent analyses, we determined that using the Medicare certification date to exclude "new HHAs" may eliminate some HHAs that, although they are new to the Medicare program, have actually been in operation for several years. Further analysis of the cost report data indicated that the per visit costs of many of these "new" agencies are within a normal range. Therefore, we proposed to include all agencies with 12-month cost reporting periods whose costs are within the outlier cutoff points.

3. Establishment of the Limits at a Percentage of the Mean

We proposed a change in the methodology concerning how the cost limits are established. In the previous schedules, limits were set at a percentile of the labor-related component of per visit costs and the nonlabor component of per visit costs. We proposed that the limits be set at 120 percent of the mean labor-related and nonlabor per visit costs effective July 1, 1985. In addition, we indicated that we might set the limits at 115 percent of mean cost, effective July 1, 1986 and at 112 percent of mean cost, effective July 1, 1987.

Since the single-method cost report provides a degree of homogeneity in per visit costs not previously available, we stated our belief that the use of the mean, a widely accepted measure of central tendency, would result in limits that are more representative of the costs incurred by efficiently operated agencies.

4. Application of the Limits by Discipline

We proposed to revise the HHA cost limit methodology to apply the limits to the cost incurred for each home health discipline, rather than to the aggregate cost of all visits. We observed that it is desirable for the costs and revenues related to each service to be managed independently. In addition, we stated that a change to application of the limits by discipline fulfills the intent of Congress as expressed in the Conference Committee Report accompanying the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). That report stated, "Although home health agency reimbursement limits are currently being imposed as a single aggregate limit, the conference committee urges the Secretary, as soon as feasible, to begin to impose the limits by type of service." (H.R. Rep 97–208, 97th Congress, 1st Session 949 (1981))

IV. Analysis and Responses to Comments

We received 87 letters concerning the proposed notice from HHAs, national and State HHA associations, associations representing other providers of health services, Members of Congress and other interested parties.

A discussion of the comments and our responses follows:

A. Elimination of Outlier Costs

Comment: Several commenters objected to the exclusion of any per visit costs from the costs used to calculate the limits.

Response: Section 1861(v)(1) of the Act requires that HCFA base the HHA cost limits on estimates of the costs *necessary* in the *efficient* delivery of needed health care (emphasis added). We do not believe that reported per visit costs of $13 for skilled nursing, $7 for physical therapy, or $8 for speech pathology accurately reflect the necessary cost of delivering these services. Neither do we believe that per visit costs of $700 for skilled nursing, $740 for physical therapy, or $726 for occupational therapy represent costs incurred in the efficient delivery of these services. Rather, these extremely low and high costs reflect a failure to properly classify and allocate costs on the Medicare cost report or, in the case of some of the high costs, a failure to operate efficiently. Their exclusion is appropriate to prevent these aberrant costs from affecting the values of the limits.

In response to several requests, we have included below the range of low costs per visit (less than two standard deviations below the mean) and high costs per visit (greater than two standard deviations above the mean) that were excluded from the costs used to establish the limits for each discipline.

Type of visit	Costs per visit	
	Low	High
MSA (NECMA)		
Skilled nursing care	$13.11—20.63	$116.66—699.39
Physical therapy	7.49—20.22	96.24—493.14
Speech pathology	8.10—22.90	107.31—348.28
Occupation therapy	10.38—21.30	102.06—725.94
Medical social services	5.86—18.96	241.95—658.46
Home health aide	6.79—12.63	67.77—381.50
Non-MSA:		
Skilled nursing care	13.30—24.05	123.35—521.82
Physical therapy	9.48—21.67	136.44—740.07
Speech pathology	11.86—24.88	137.84—516.46
Occupation therapy	12.37—22.97	145.74—340.28
Medical social services	10.77—13.53	389.36—889.36
Home health aide	6.22—12.53	70.94—902.59

Comment: One commenter questioned the appropriateness of the proposed change to the method used to define outlier costs.

Response: In analyzing the distribution of wage index adjusted per visit costs, we found that the distributions for each discipline are highly peaked (suggesting a high degree of central tendency) and skewed right. This type of distribution is not unusual for economic data, as the adjusted per visit costs can be very large, but cannot be less than zero. Had we defined outlier points as plus or minus two standard deviations from the mean of the per visit costs for each discipline, none of the extremely low costs would have been excluded, as minus two standard deviations from the mean was less than zero for all disciplines.

However, the distribution of this type of data is generally log-normal; that is, the natural logarithms of the cost per visit values are much closer to a normal distribution than is the distribution of the actual costs themselves. We tested this hypothesis by determining the extent to which each distribution deviated from normality before and after log-transformation. In all cases, the deviation from normality (Kolomogorov-Smirnov D-Statistic) of the log-transformed distributions was significantly lower. Therefore, we defined the outlier cutoff points as plus or minus two standard deviations from the mean of the log-transformed cost per visit values, thereby esliminating extreme values from both ends of the distribution. This provision eliminated approximately 600 of the approximately 12,200 costs per visit values in the data base.

B. Inclusion of the Costs of New HHAs in the Limits

Comment: One commenter stated that, by including the costs of new HHAs in the costs used to determine the limits, this notice was eliminating the exception provided for new HHAs.

Response: The purpose of this notice is to promulgate a revised schedule of limits, and it contains no revision to § 405.460(f)(7), which allows an exception to the limits for new HHAs.

C. Establishment of the Limits as a Percentage of the Mean

Comment: Several commenters questioned the appropriateness of the change from a percentile to a percent of the mean as the basis for the limits.

Response: We had been planning, for some time, to reevaluate the methodology used to establish the limits when more accurate data from the single method cost report became available. The data used to establish these limits are comprised exclusively of data from the second year of use of the single method cost report.

One per visit cost variations due to geographic variations in prevailing wage levels were reduced by the wage index adjustment, we found a high degree of homogeneity in the resulting costs. Since a large majority of HHAs is incurring similar costs for the same type of service, we find that the mean is an appropriate measure. This results in a basis for the limits that is reflective of the high degree of central tendency in the distribution of per visit costs.

Comment: A number of commenters argued for a level higher than 120 percent of the mean.

Response: In determining an appropriate level to propose for the limits, we considered several other levels. However, 120 percent of the mean was the highest level considered. The high degree of central tendency exhibited by the distributions of per visit costs does not support the use of a margin greater than 20 percent to accommodate cost variations not accounted for by the limits methodology. That is, with the wage index adjustment controlling for variations in prevailing wage levels, we found, for all disciplines, that a majority of providers incur similar costs for the same services.

For cost reporting periods beginning on or after July 1, 1985, we considered adopting levels at 115 percent of the mean and, alternatively, at 112 percent of the mean, both of which could be supported by the distribution of the data. However, we chose 120 percent of the mean for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986, 115 percent of the mean for cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987, and 112 percent of the mean for cost reporting periods beginning on or after July 1, 1987 and before July 1, 1988. We chose these levels because these levels will provide additional incentives for efficient operation of HHAs, while avoiding the adverse impact of a sudden, large decrease in the limits.

Several commenters compared the proposed July 1, 1985 limits to those effective July 1, 1984 to argue for a higher level for the proposed limits. In comparing the July 1, 1985 limits to those effective July 1, 1984, it should be noted that the actual rates of inflation for 1984 and those currently projected for 1985 are lower than the projected rates of inflation for those two years that were used in developing the July 1, 1984 limits.

Comment: Several commenters stated that the HHA cost limits methodology should take into account the fact that prospective payment for hospitals is resulting in the discharge of patients to home health care who require a more intense and costly level of care (including high technology services) than was the case before the prospective payment system went into effect.

Response: We have received allegations of individual instances of hospitals discharging patients who require a more intense level of care in the initial portion of their home care treatment than generally was needed for patients discharged from hospitals prior to the prospective payment system. However, we find no indication in any of the data available to us of an identifiable trend in increased costs per visit related to an increase in the provision of high technology services or the inception of the prospective payment system. We are monitoring many aspects of prospective payment and its effect, if any, on posthospital care.

D. Use of a Single Level for all Limits Versus Use of Different Levels for Different Disciplines

Comment: The few commenters who addressed this issue expressed a concern about the basis that would be used to determine the appropriate level for different disciplines. It was suggested that the level used for skilled nursing should be higher than that used for the other five disciplines. Medical social services was identified as a discipline for which a lower level would be appropriate. Another suggestion was that the level of the limit should be inversely related to volume. It was also suggested that the level for each discipline should be related to the projected number of HHAs with costs in excess of the limit for that discipline.

Response: There appear to be diverse opinions within the industry on this question, and we intend to continue studying possible alternatives. If we find evidence that supports a change in methodology, we will publish a proposed notice for public comment.

E. Application of the Limits by Discipline.

Comment: A number of commenters questioned whether the data used to develop the limits were sufficiently accurate to allow application of the limits by discipline.

Response: As discussed above, we find that the improvement in the quality of the cost reporting has provided us with data of sufficient accuracy to allow application of the limits by discipline, enabling us to follow the intent of Congress as expressed in the Conference Committee Report (H.R. Rep. 97–208, 97th Congress, 1st Session 949 (1981)) accompanying Pub. L. 97–35.

Comment: A number of commenters argued that per discipline application of the limits should be delayed to allow agencies additional lead time to adjust their operating plans.

Response: We find that providers have been afforded more than adequate advance notice of this change. In the *original* Schedule of limits (44 FR 31815, June 1, 1979) we stated, "When all providers are using a uniform method of cost finding and apportionment, we *will* apply the per visit limit for each discipline to the costs per visit of that discipline" (emphasis added). In each of the five notices of limits subsequently published, we reaffirmed this intention. In the notice establishing the present schedule of limits (49 FR 27274, July 2, 1984), we stated that data from the first year of use of the single method cost report were available, and the only reason we were not applying those limits by discipline was because of the obvious errors made in completing the cost report due to the first year of use. Because these limits are applied to the average annual costs per visit of each discipline, providers have, at a minimum, the entire 12 months of their fiscal year to make whatever management changes are necessary to accommodate the effect of per discipline application.

Comment: Commenters stated that agencies would stop offering services in those disciplines that were over the limit

Response: Agencies with per visit costs in excess of the limits for one or

more, but not all, disciplines will fall into one of four categories.

The first category is comprised of HHAs with excess costs attributable to inefficient operation. These agencies will have to identify and correct the causes of their higher costs if they are to avoid disallowances.

The second category consists of those agencies whose excessive cost in a discipline is caused by a failure to properly classify costs. For example, in the case of most of the approximately 40 HHAs whose costs per visit for medical social service were excluded from the limits calculation as an outlier cost, there was an apparent failure to differentiate between activities related to specific patients (visiting costs) and activities on behalf of the agency or all patients (administrative costs). In these situations, improved recordkeeping will result in the proper classification of costs, with the result, in many instances, of all disciplines being below their respective limits.

In the third category are agencies whose excessive cost is attributable to the fact that the demand for a given discipline is insufficient to allow the efficient utilization of a full time employee. In these instances, agencies could reduce their cost by changing to part-time employment, by providng the services under arrangement with an allied medical professional, or by making other changes in their pattern of service delivery. Either action would have the effect of immediately reducing the excessive cost that was caused by idle capacity.

The fourth category consists of agencies in areas where the prevailing charge for services under arrangements is such that the agency is unable to provide the service at a cost below the limit. In these instances, the agency may apply for and receive a special labor market exception under the provisions of § 405.432(f)(2). These excessive costs may also be considered for an exception under the provisions of § 405.460(f).

Comment: Several commenters stated that per discipline application of the limits will remove an element of flexibility that providers need to accommodate circumstances such as the provision of uncompensated care and providing home health services to patients with unusually intense care needs.

Response: We recognize that there will be valid circumstances not anticipated by the limits methodology that will cause a provider to incur cost in excess of that allowed by the limits, and we provide for these extraordinary situations through the exceptions process. However, it is not in the interest of either beneficiaries or the Medicare program for HHAs to continue to subsidize high cost disciplines with lower cost disciplines, without investigating the possibility of reducing the higher costs. Rather, it is desirable for all agencies to monitor continually the cost of providing each discipline and to take steps to control the cost of any discipline as soon as there are indications that costs are increasing. We are aware of well managed agencies that monitor per discipline cost on a monthly and even, in some cases, weekly basis. These agencies are generally able to provide services consistently at a cost below the limits for each discipline they offer. To summarize we believe that per discipline application of the limits will give all agencies an incentive to improve their management controls, with immediate and ongoing benefit to all home health care patients through a reduction in cost and a moderation in the future rate of increase in cost.

F. Publication of Limits at 115 Percent of the Mean Effective July 1, 1986 and 112 Percent of the Mean Effective July 1, 1987

Comment: Some commenters suggested that HCFA needs to determine the effect of per discipline application of the limits at 120 percent of mean cost before proceeding with reductions to 115 percent and then 112 percent.

Response: We expect that the application of the limits by discipline will result in continuing improvements in management, recordkeeping, and cost reporting by most HHAs. Setting the limits at 120 percent of mean cost will provide a further incentive to contain costs through improved efficiency. This improvement in efficiency should result in a moderation in the rate of increase in average per visit costs. Because we expect improvements resulting from modifications in provider behavior to continue, we believe that the margin above the mean allowed in future schedules of limits can be reduced without adversely affecting efficiently operated HHAs. Therefore, we provide in this notice for limits set at 115 percent of mean cost, effective July 1, 1986, and at 112 percent of mean cost, effective July 1, 1987. Under section 2319 of the Deficit Reduction Act of 1984, Pub. L. 98-369, 112 percent of the mean is the upper limit that Congress determined is appropriate for efficiently operated skilled nursing facilities, and we believe that the same percentage is equally applicable to HHAs. The 115 percent limit is a transition amount.

Were we to agree not to change the level of the limits until a study of the impact could be completed, the earliest date by which we could begin an analysis would be March 1988, when more than 50 percent of the cost reports subject to the July 1, 1985 limits will have been filed and available to us. Under these circumstances, the earliest we could promulgate limits at 115 percent of the mean would be January 1, 1989, and promulgation of limits at 112 percent of the mean would be delayed until July 1, 1991.

Comment: the numerous commenters who addressed this issue were unanimous in their opposition to the proposal. Several commenters objected to the publication of future limits using current data and economic estimates. They were of the opinion that limits should not be proposed unless they were based on the data that would be the basis for the final schedule of limits.

Response: In this final notice, we have not included the schedules of limits that will apply beginning July 1, 1986 and July 1, 1987, respectively, because the schedules will be based on the latest available cost data adjusted by the latest estimates in the market basket index. However, we are setting the limits at 115 percent of mean cost for 12-month cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987 and at 112 percent of mean cost for 12-month cost reporting periods beginning on or after July 1, 1987 and before July 1, 1988. Thus, we are putting into place the three-year methodology that we proposed, although we are not now publishing the schedules for the last two years.

G. Comments on Other Elements of the Proposed Limits Methodology

Comment: Comments were received questioning the adequacy and reliability of the data that were the basis for the limits.

Response: The data base is comprised of data from every 12-month HHA cost report available as of September 30, 1983. Because of the lead time necessary for extraction and analysis prior to publication of a proposed notice, these data are the latest practicable. As discussed above, the quality of the data improved significantly from the quality of the data contained in previous data bases. No other source of national data on the cost of home health care approaches the scope, depth, and accuracy of this data base.

Comment: Several commenters suggested that the data used to determine the relative importance of the categories of cost in the market basket

index were out of date and do not reflect current industry experience.

Response: The 1977 data are the latest available that are of sufficient scope to allow the development of reliable weights for the various categories of costs. As discussed in the proposed notice, the market basket is a Laspeyres price index, which allows the relative importance of each category to change over time in accordance with changes in the price variables of each category. As a consequence, the relative importance values used in this final notice take into account all changes in the price variables since the construction of the index.

Since the introduction of the input price index in 1980, it has been our intention to review the weights periodically. To this end, we expanded the amount of cost report data extracted for these limits and will begin a study of these data in the immediate future. If we find that changes in the construction of the market basket are indicated, the changes will be incorporated in the next update of the schedule of limits.

Comment: One commenter questioned the accuracy of the percentage of contract services used in determining the labor-related portion of per visit cost.

Response: Since the contract service category is composed of labor-related and nonlabor elements, only a portion of the relative importance of this category is appropriately included with the relative importance of the employee wage and benefit categories in determining the labor-related portion of per visit costs. The portion of contract services that is labor-related is determined by assuming that the relative importance of the labor-related and nonlabor elements of this category is the same as that of the sum of the other categories. Therefore, of the 6.87 percent relative importance given contract services, 5.47 percent was deemed to be labor-related and was included with the relative importance values of wages and fringe benefits in determining the percentage of per visit costs that was labor-related.

Comment: Comments were received questioning the definitions of the MSAs used in the proposed notice. One comment specifically concerned the definition of the Chicago MSA.

Response: The responsibility for the development and promulgation of all policy related to MSAs, including the criteria used in determining the MSA to which a country will be assigned, rests solely with the Executive Office of Management and Budget. Comments on MSA designations should be directed to: Office of Information and Regulatory Affairs, Executive Office of Management and Budget, Washington, D.C. 20503

The definition of the Chicago MSA included in the proposed notice was correct. Any additional questions should be directed to the address above.

Comment: Several commenters are concerned that the wage indexes were affected by changes in the level of fringe benefits in some areas and also that the indexes did not increase with increases in local wage levels.

Response: The wage indexes are based on reported hospital wages, and are not affected by any changes in the level of fringe benefits paid. The wage indexes are not used as a measure of the absolute wage level in any one area of the country; rather, they measure the prevailing wage level in each area *relative* to the national average for all areas. The index for a given area will increase and decrease from year to year as the prevailing hospital wage level for that area increases and decreases *relative* to the national average.

Comment: One commenter asked why we are not using the new wage index developed for the prospective payment system. In addition, several commenters questioned the accuracy of the wage indexes and the limits for rural (non-MSA) areas.

Response: As noted in the proposed notice, we are considering a survey-based hospital wage index for use with the hospital prospective payment system. In the June 10, 1985 proposed rule concerning changes to the prospective payment system for fiscal year 1986, comments were requested regarding the use of this wage index (50 FR 24377). As no decision has been made on this issue, it would be premature to adopt the survey-based wage index for this schedule of limits. If a decision is made to use the survey-based wage index for the hospital prospective payment system, we may use this index in future schedules of HHA limits. However, we are also exploring the feasibility of developing an HHA industry-specific wage index system from the employee wage and compensation analysis data taken from the Medicare cost reports.

We have retained separate MSA (urban) and non-MSA (rural) schedules of limits so that the limits reflect the differences in operating environments in these two types of locales. Therefore, rural providers are subject to limits based on data from peer providers operating in similar circumstances. The separate, rural limits should reflect the circumstances unique to this environment.

The wage indexes used in this final notice are based on the latest BLS data available in time to allow the incorporation of the indexes in the limits methodology. If we discover that we or BLS have made any error that results in an incorrect wage index for any area, we will direct the Medicare intermediaries to recalculate the limits.

Comment: Comments were received supporting and opposing the use of an add-on adjustment for hospital-based HHAs.

Response: The basis and the purpose of the add-on have been discussed in detail in previous notices (see 47 FR 42904, September 29, 1982 and 49 FR 27272, July 2, 1984). In summary, the add-on is intended to recognize legitimately incurred hospital overhead cost allocated to the HHA in excess of the HHAs consumption of hospital overhead resources. We do not intend to give a hospital-based provider a financial advantage over a freestanding HHA. Rather, the add-on is intended to make the limits neutral as to the ownership status of an HHA. For example, one of the ways this is accomplished under existing policy is excluding from costs subject to the limits the return on owner's equity paid to proprietary providers.

We are also clarifying that the hospital overhead cost that is the basis for the add-on was not included in the costs used in determining the prospective payment rate for inpatient hospital services.

Comment: Several comments were received questioning the continued use of a hospital cost reporting form for hospital-based HHAs that creates the need for an add-on. These commenters suggested that all HHAs be required to file the same form.

Response: Since requiring use of the single method cost report for all HHAs would require a change in the regulations, we are unable to adopt this comment at this time. However, we are considering proposing such a change.

Comment: Commenters stated that the limits for home health aide services should be applied on a per hour rather than per visit basis.

Response: Since 1980, Medicare regulations at § 405.452(a)(3) have required the determination of reimbursable costs on a per visit basis for all six disciplines.

Comment: A number of commenters stated that the limits methodology should include an adjustment for variations in intensity of care (that is, a case-mix adjustment).

Response: While we recognize that some individual cases will require a

level of care more intense that is required on the average, there are no data currently available that demonstrate a significant variation in average intensity of care among HHA's. The cost per visit reported by each agency is the average cost of all visits for a year, and all agencies will have some cases that require more intense levels of care. However, we know of no information that demonstrates that differences in cost per visit among otherwise similar agencies are attributable to differences in the average intensity of care required by the patients of the agencies. We are studying this issue.

Comment: Several commenters observed that the limits should provide positive incentives, as well as negative, to contain costs. It was suggested that the limits should reward providers with costs for a discipline below the limit for that discipline, as well as penalize those providers with costs in excess of the limits.

Response: Section 1861(v)(1) of the Act currently requires that reimbursement for home health services be based on reasonable cost subject to an upper limit. Therefore, in the absence of a change in the statute, we cannot implement such a change. We are in agreement with the sentiment expressed by these commenters, that a desirable system of reimbursement should provide for both positive and negative incentives to contain costs. It is for this reason that we continue actively to investigate the feasibility of developing a prospective payment system for home health services. A prospective payment system without retroactive settlement based on incurred costs, by its very nature, automatically rewards efficient operation with a profit, while it penalizes inefficient operation with a loss.

Comment: Numerous commenters were quite concerned about the effect of the proposed limits in combination with the cap on HHA reimbursement contained in the President's Budget.

Response: The refinements to the HHA limits methodology contained in this notice are consistent with the intent of the President's Budget.

Comment: Several commenters questioned the inclusion of capital-related costs in per visit costs subject to the limits.

Response: Capital-related costs are excluded from costs subject to the hospital limits and diagnosis-related group rates under the prospective payment system, and the skilled nursing facility limits, because these costs are a significant component of total cost and vary significantly among facilities.

In the case of an HHA, these costs are, on the average, less than three percent of total agency costs and do not tend to exhibit the degree of variation found in capital-related costs of providers of inpatient services. Therefore, we find no compelling reason to exclude this portion of costs from the control established by the cost limits.

Comment: We received a number of other comments concerning various elements of the methodology used in both this and previous schedules of limits.

Response: As has been true of all schedules of limits, the limits in this schedule represent our best estimate of the cost necessary in the efficient delivery of needed health services. The methodology used in this notice incorporates all feasible refinements to improve the accuracy of the limits. We intend to continue studying various aspects of the home health industry. As information that allows further refinements to the limits methodology becomes available, we will include these refinements as proposed changes to future schedules of limits.

Comment: Several commenters asserted that the 30-day comment period did not provide enough time for the public to comment effectively on so many complex, critical policies.

Response: The Administrative Procedure Act (5 U.S.C. 553) does not specify a minimum time for the length of a public comment period. The courts have consistently held that a 30-day comment period is sufficient. In addition, we provided a 30-day comment period for the schedule of limits that took effect July 1, 1984 and, as with the many regulations we propose, we find that a 30-day comment period is sufficient.

We received 87 items of correspondence from HHAs and other interested parties. The issues raised covered a broad range of concerns, as demonstrated by our discussion of the comments throughout this document. Therefore, we do not believe that the length of the comment period was inappropriate. However, any time we receive letters from the public, we consider the issues raised. If we were to be convinced that future changes to the limits methodology should be made, we would propose them in the **Federal Register.**

V. Changes to the Proposed Notice

A. Corrections of Errors in Cost Report Data

Subsequent to preparation of the proposed notice, the cost report data were subjected to four additional computerized edits. Each of these edit runs identified additional errors in the data that were corrected prior to the next edit run. As a consequence, the cost report data base is the most accurate available source of data for use in estimating the cost incurred by an efficiently operated HHA.

B. Update of Market Basket Index

The market basket index was updated immediately prior to the determination of the final limit values. This update incorporated both the latest available information on changes in each category of input price and any changes in assumptions on economic trends. Since the actual and estimated annual rates of increase in section VIII.A of this final notice are based on information more current than the actual and estimated annual rates of increase that was available when the proposed notice was prepared, the newer rates more accurately reflect the economic environment that will prevail during the period these limits will be in effect.

C. Wage Indexes Based on Later Wage Data

The wage indexes used in the proposed notice were based on hospital industry wage data for 1982. When the proposed notice was prepared, these 1982 data were the latest data available. We stated in the proposed notice that, if later data were available in time for use in the final notice, we would use the later data in developing the final schedule of limits. The BLS was able to develop wage indexes from data for calendar year 1983 in time for us to incorporate them in the final limits methodology. Since the wage indexes in this final notice are based on later data, they should be a more accurate measure of geographic variations in prevailing wage levels than the wage indexes used in the proposed notice.

D. Schedules Effective July 1, 1986 and July 1, 1987

We are setting the limits at 115 percent of mean cost for 12-month cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987 and at 112 percent of mean cost for 12-month cost reporting periods beginning on or after July 1, 1987 and before July 1, 1988. However, in this final notice, we have not included the schedules of limits that will apply beginning July 1, 1986 and July 1, 1987, respectively, because the schedules will be based on the latest available cost data adjusted by the latest estimates in the market basket index. Thus, we are putting into place the three-year methodology that we

proposed, although we are not now publishing the schedules for the last two years.

VI. Provisions of the Limits Effective July 1, 1985, July 1, 1986 and July 1, 1987

The limits methodology contained in this final document is the same as that contained in the proposed schedule of limits with one exception: This final notice does not include the schedule for limits set at 115 percent of mean cost, effective July 1, 1986 or the schedule for limits set at 112 percent of mean cost, effective July 1, 1987. We have not now included the schedules of limits that will apply beginning July 1, 1986 and July 1, 1987, respectively, because the schedules will be based on the latest available cost data adjusted by the latest estimates in the market basket index.

To summarize, the new schedule of limits effective July 1, 1985 provides for the following:

A. A classification system based on whether an HHA is located within an MSA or NECMA or a non-MSA area. (See Table III A, below, for the listing of MSA/NECMA areas.)

B. The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies. We have provided for an "add-on" adjustment of the freestanding HHA limit (which is equal to 10.7037 percent of the mean for the MSA group and 11.5050 percent for the non-MSA group) for each hospital-based discipline to account for the higher A & G costs resulting from Medicare cost allocation requirements. That is, the labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, will be added to each freestanding limit to determine the per discipline limits for hospital-based agencies.

C. The use of the following market basket index developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule, which differ from those in the proposed schedule, reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1977 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category.

The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1984 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and vice versa.

In developing the market basket index, we obtained historical and projected rates of increase in the resource prices for each category. The price variables and the source of the forecast for calendar years 1984 through 1986 are identified in the third and fourth columns of the updated market basket included in this notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, WEIGHTS, FORECASTERS, AND PRICE VARIABLE USED

Cost categories	Relative [1] importance 1986	Forecaster of [2] percent changes (1984–86)	Price variable used
Wages and salaries	65.22	DRI–CFS	Average hourly earnings of nonsupervisory private hospital workers. (SIC 806) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly).
Employee benefits	8.90	DRI–TL	Supplements to wages and salaries per worker in nonagricultural establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business* (monthly). For total employment—U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings (monthly).
Transportation	4.64	DRI–TL	Transporation component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Office costs	2.67	DRI–TL	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Medical nursing supplies and rental equipment	2.48	HCFA–HHS	Medical equipment and supplies component of the Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Nonrental space occupancy	1.33	DRI–TL	Composite Fuel and other Utilities Index. Source: HHS–HCFA, Community Hospital Input Price Index.
Rent	1.21	DRI–CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Miscellaneous	6.48	DRI–TL	Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
Contract services	6.87	HHS	Weighted mean of price variables for the preceding eight items.
Total	100.00		

[1] Relative cost weights for 1977 were derived from special studies by HCFA using primarily data from HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. The relative importance values change over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.

[2] DRI–TL refers to Data Resources, Inc., Trendlong (TL 0485), 29 Hartwell Avenue, Lexington, Massachusetts 02173; DRI–CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS–852), 1750 K Street NW., Washington, D.C. 20006.

D. An adjustment to the limits if the estimated market basket rate differs from the actual rate by more than 3/10 of one percentage point (that is, higher or lower).

E. The use of a wage index that was developed from hospital wages for the calendar year 1983. As noted above, the index was developed from data supplied by the BLS for the hospital group, a standard BLS reporting category. The wage index is used to adjust the labor-related portion of the limits and the A & G add-on to reflect differing wage levels among the areas (MSA/NECMA and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (65.22 percent) and the employee benefits portion (8.90 percent), plus a factor representing a proportionate share of contract services (5.47 percent), is used to determine the labor component (79.59 percent) of all HHA per visit costs used to set the limits.

Should the Executive Office of Management and Budget announce changes in the MSA designations before July 1, 1985, we will recalculate the wage indexes for the affected areas and direct our intermediaries to use these revised indexes in determining the limits for HHAs they service.

F. Separate treatment of the labor-related and non-labor components of per visit costs. The separate components of cost are calculated by obtaining actual HHA cost data for each agency and

increasing those data by the actual and projected increases in the HHA market basket. We then separate each HHA's per visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of wage geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparision group, the resulting amounts are shown in Table I.

G. The use of a cost of living adjustment to the nonlabor portion of the limits for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

H. Limits that are applied to the per visit cost of each type of service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide.

VII. Application of Limits to State Medicaid Rates

Methods of reimbursement for HHAs under Medicaid are determined by the individual State agencies. There is no existing regulatory requirement that Medicare cost limits be applied to payment rates for HHA services under Medicaid. Therefore, Medicare cost limits for HHAs apply to Medicaid payments only in those States that choose to incorporate the limits into their State plans for payment for home health services.

VIII. Methodology for Determining Cost Per Visit Limits

A. Data

The limit values were determined by extracting actual cost per visit data from Medicare cost reports for periods ending on or before September 30, 1983. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1985 (the midpoint of the first cost reporting period to which the limits will apply). The annual percentage increases used to compute the per visit costs are:

Calendar year	Percent increase
1982	[1] 10.1
1983	[1] 6.8
1984	[2] 5.6
1985	[2] 5.1
1986	[2] 4.0

[1] Final rate.
[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than ⅓ of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit at the time of final settlement.

B. Deflation by Wage Index

After adjustment by the market basket index, we divided each HHA's per visit costs into labor and nonlabor portions. The labor portion of costs (79.59 percent) was determined by using the 74.12 percent employee wage and benefit factor from the market basket, plus 5.47 percent, which represents a proportionate share of the market basket relative importance for contract services. We then divided the labor portion of per visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

C. Adjustment for "Outliers"

We transformed all per visit cost data into their natural logarithms and grouped them by type of service and MSA and non-MSA locations, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per visit costs within two standard deviations from the mean in each service.

D. Basic Service Limit

A basic service limit equal to 120 percent of the mean labor and nonlabor portions of the per visit costs of freestanding HHAs is calculated for each type of service. (See Table I.)

IX. Computing the Adjusted Limit

A. Adjustment of Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the Medicare fiscal intermediary first multiplies the labor-related component of the limit for the comparison group by the appropriate wage index. (See Tables I, III A and III B.) The adjusted limit applicable to an HHA is the sum of the nonlabor component plus the adjusted labor-related component.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (table I)	$42.40
Wage index (table IIIA)	×1.0969
Adjusted labor component	46.51
Nonlabor component (table I)	+12.01
Adjusted occupational therapy limit	58.52

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1985, the adjusted per visit limit for each service is revised by a factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, an HHA's cost reporting period begins January 1, 1986. As calculated in the example in section IX A of this notice, the labor adjusted per visit limit for occupational therapy for this HHA's group is $58.52.

Computation of Revised Limit for Occupational Therepy

Adjusted per visit limit	$58.52
Adjustment factor from table IV	×1.0198
Revised per visit limit	59.68

In this example, the revised adjusted per visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1986, is $59.68 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of a cost reporting period. For cost reporting periods of other than 12 months in duration, the calculation must be done specifically for the midpoint of the cost reporting period. In such cases, the intermediary for the HHA must obtain this adjustment factor from HCFA.

C. Adjustment for Hospital-Based Agencies

If an HHA participates in the Medicare program as part of a hospital that is required to file a HCFA-2552 cost report (see Provider Reimbursement Manual, HCFA Pub. 15-2, Chapter 12), and qualifies as hospital-based in accordance with the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA will be considered a hospital-based agency and will be entitled to an adjustment of the per visit limit to account for higher administrative and general costs resulting from the Medicare cost allocation requirements. The intermediary will compute the adjusted cost limit as described in the example following Table II.

X. Schedule of Limits Effective July 1, 1985

The schedule of limits set forth below applies to 12-month cost reporting

periods beginning on or after July 1, 1985 and before July 1, 1986. The intermediaries will compute the adjusted limits using the wage indexes published in Tables III A and III B and notify each HHA they service of its applicable limits.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Medical supplies that are not routinely furnished in conjunction with patient care visits and are directly identifiable as services to an individual patient (that is, medical supplies for which a separate charge is made, in addition to the per visit charge) are excluded from the per visit cost if they meet all of the following criteria—

- The common and established practice of comparable HHAs in the area is to charge separately for the items;
- The HHA follows a consistent charging practice for Medicare and non-Medicare patients receiving the item;
- Generally, the item is not frequently furnished to patients;
- The item is directly identifiable to an indiviaual patient and its costs can be identified and accumulated in a separate cost center; and
- The item is furnished at the direction of the patient's physician and is specifically identified in the plan of treatment.

This explanation of nonroutine medical supplies is consistent with instructions for reporting the cost of these supplies on the revised HHA cost report, forms HCFA–1728 and HCFA–2552K. The reasonable cost of durable medical equipment and supplies that are not routinely furnished in conjunction with patient care visits will be reimbursed without regard to the schedule of limits.

Before the limits are applied at cost settlement, the provider's actual costs will be reduced by the amount of individual items of cost (for example, administrative compensation or contract services) that are found to be excessive under Medicare principles of provider reimbursement. In this regard, the fiscal intermediaries will review the various reported costs against such screens as the cost guidelines for physical therapy under arrangements (see § 405.432) and against the limitation on costs that are substantially out of line with those of comparable agencies (see § 405.451).

TABLE I.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES [1]

Type of visit	Limit	Labor portion	Nonlabor portion
MSA (NECMA) location:			
Skilled nursing care	$53.41	$41.84	$11.57
Physical therapy	51.31	40.17	11.14
Speech pathology	58.09	45.42	12.67
Occupational therapy	54.41	42.40	12.01
Medical social services	80.64	62.66	17.98
Home health aide	34.61	27.03	7.58
Non-MSA location:			
Skilled nursing care	58.39	47.79	10.60
Physical therapy	59.98	49.19	10.79
Speech pathology	68.64	55.96	12.68
Occupational therapy	65.69	53.68	12.01
Medical social services	81.55	66.77	14.78
Home health aide	34.11	27.91	6.20

[1] Nonlabor component of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands will be increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.150
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.125
Puerto Rico	1.075
Virgin Islands	1.125

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

	A and G add-on	Labor portion	Nonlabor portion
MSA (NECMA) location:			
Skilled nursing care	$6.07	$4.71	$1.36
Physical therapy	5.05	3.89	1.16
Speech pathology	6.06	4.67	1.39
Occupational therapy	5.52	4.23	1.29
Medical social services	8.42	6.47	1.95
Home health aide	3.88	3.01	.87
Non-MSA location:			
Skilled nursing care	6.66	5.46	1.20
Physical therapy	6.25	5.13	1.12
Speech pathology	8.42	6.88	1.54
Occupational therapy	6.08	5.03	1.05
Medical social services	11.87	9.67	2.20
Home health aide	3.92	3.20	.72

Example.—A hospital-based agency in New York City has a wage index of 1.3378. It provides the following services: Skilled Nursing, Physical Therapy, Home Health Aides.

The published limits for that agency are:

	Limit		Add-on	
	Labor portion	Nonlabor portion	Labor portion	Nonlabor portion
SN	$41.84	$11.57	$4.71	$1.36
PT	40.17	11.14	3.89	1.16
HHA	27.03	7.58	3.01	.87

CALCULATION OF HOSPITAL-BASED LIMIT WITH ADD-ON

	SN	PT	HHA
Limit labor portion	$41.84	$40.17	$27.03
Add-on labor portion	+4.71	+3.89	+3.01
Total labor portion	46.55	44.06	30.04
Wage index	×1.3378	×1.3378	×1.3378
Adjusted labor portion	62.27	58.94	40.19
Limit nonlabor portion	11.57	11.14	7.58
Add-on nonlabor portion	+1.36	+1.16	+.87
Adjusted limits	75.20	71.24	48.64

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.9133
Taylor, TX	
Aguadilla, PR	.5539
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.0600
Portage, OH	
Summit, OH	
Albany, GA	1.9206
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9035
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0727
Bernalillo, NM	
Alexandria, LA	1.0018
Rapides, LA	
Allentown-Bethlehm, PA-NJ	1.6017
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1.1005
Blair, PA	
Amarillo, TX	1.0400
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2360
Orange, CA	
Anchorage, AK	1.5702
Anchorage, AK	
Anderson, IN	.9666
Madison, IN	
Anderson, SC	.8852
Anderson, SC	
Ann Arbor, MI	1.2703
Washtenaw, MI	
Anniston, AL	.8675
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.9626
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	.6036
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.9343
Buncombe, NC	
Athens, GA	.8343
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9733
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0988
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9826
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0210
Kane, IL	
Kendall, IL	
Austin, TX	1.1068
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1867
Kern, CA	
Baltimore, MD	1.0325
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9476
Penobscot, ME	
Baton Rouge, LA	1.0477
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0131
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0920
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.1631
Beaver, PA	
Bellingham, WA	[1] 1.0600
Whatcom, WA	
Benton Harbor, MI	.8716
Berrien, MI	
Bergen-Passaic, NJ	1.0181
Bergen, NJ	
Passaic, NJ	
Billings, MT	[1] 1.0268
Yellowstone, MT	
Biloxi-Gulfport, MS	.8701
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9500
Broome, NY	
Tioga, NY	
Birmingham, AL	1.0028
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9900
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9185
Monroe, IN	
Bloomington-Normal, IL	.9404
McLean, IL	
Boise City, ID	1.0414
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1312
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	.9902
Boulder, CO	
Bradenton, FL	[1] .9513
Manatee, FL	
Brazoria, TX	.8775

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Brazoria, TX	
Bremerton, WA	[1] .9434
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1497
Fairfield, CT	
Brownsville-Harlingen, TX	.9250
Cameron, TX	
Bryan-College Station, TX	1.0513
Brazos, TX	
Buffalo, NY	.9933
Erie, NY	
Burlington, NC	.8514
Alamance, NC	
Burlington, VT	[1] 1.0053
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	.6232
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	.9697
Carroll, OH	
Stark, OH	
Casper, WY	[1] 1.0104
Natrona, WY	
Cedar Rapids, IA	[1] .9185
Linn, IA	
Champaign-Urbana-Rantoul, IL	1.0274
Champaign, IL	
Charleston, SC	1.0127
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.1369
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.9480
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	1.0144
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9667
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Chicago, IL	1.1729
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0344
Butte, CA	
Cincinnati, OH-KY-IN	1.0330
Dearborn, IN	
Boone, KY, Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8386
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.2337
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0966
El Paso, CO	
Columbia, MO	1.0069
Boone, MO	
Columbia, SC	.9390
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.8823
Russell, AL	
Chattahoochee, GA	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Muscogee, GA	
Columbus, OH	1.0530
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9328
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8925
Allegany, MD	
Mineral, WV	
Dallas, TX	1.0969
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	[1] .8823
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	.9928
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0928
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	1.0024
Volusia, FL	
Decatur, IL	1.0025
Macon, IL	
Denver, CO	1.0024
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0632
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1661
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.9092
Dale, AL	
Houston, AL	
Dubuque, IA	.9486
Dubuque, IA	
Duluth, MN-WI	.9437
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9942
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9419
El Paso, TX	
Elkhart-Goshen, IN	.9185*
Elkhart, IN	
Elmira, NY	1.0350
Chemung, NY	
Enid, OK	.9777
Garfield, OK	
Erie, PA	1.0215
Erie, PA	
Eugene-Springfield, OR	.9799
Lane, OR	
Evansville, IN-KY	1.0336
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0219
Clay, MN	
Cass, ND	
Fayetteville, NC	[1] .9472
Cumberland, NC	
Fayetteville-Springdale, AR	.8180

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washington, AR	
Flint, MI	1.2322
Genesee, MI	
Florence, AL	.8168
Colbert, AL	
Lauderdale, AL	
Florence, SC	.8723
Florence, SC	
Fort Collins-Loveland, CO	1.0085
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0986
Broward, FL	
Fort Myers-Cape Coral, FL	.9797
Lee, FL	
Fort Pierce, FL	1.0200
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9592
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	[1] .8306
Okaloosa, FL	
Fort Wayne, IN	.9281
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	1.0223
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1791
Fresno, CA	
Gadsden, AL	.9247
Etowah, AL	
Gainesville, FL	.9676
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1360
Galveston, TX	
Gary-Hammond, IN	1.1581
Lake, IN	
Porter, IN	
Glens Falls, NY	.8267
Warren, NY	
Washington, NY	
Grand Forks, ND	.9576
Grand Forks, ND	
Grand Rapids, MI	1.0030
Kent, MI	
Ottawa, MI	
Great Falls, MT	[1] 1.0969
Cascade, MT	
Greeley, CO	[1] 1.0412
Weld, CO	
Green Bay, WI	.9974
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9478
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9013
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9388
Washington, MD	
Hamilton-Middletown, OH	1.0167
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0705
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-New Middletown-Britain-Bristol, CT	1.1460
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.9146
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1217
Honolulu, HI	
Houma-Thibodaux, LA	.9209
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.1473
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	1.0269
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.9248
Madison, AL	
Indianapolis, IN	1.0760
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.0948
Johnson, IA	
Jackson, MI	[1] 1.0062
Jackson, MI	
Jackson, MS	.8769
Hinds, MS	
Madison, MS	
Rankin, MS	
Jacksonville, FL	1.0197
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	[1] .7823
Onslow, NC	
Janesville-Beloit, WI	.9504
Rock, WI	
Jersey City, NJ	1.0558
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.9382
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	1.0247
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1197
Grundy, IL	
Will, IL	
Joplin, MO	1.0228
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2477
Kalamazoo, MI	
Kankakee, IL	1.0117
Kankakee, IL	
Kansas City, MO-KS	1.0475
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	[1] 1.0144
Kenosha, WI	
Killeen-Temple, TX	.9766
Bell, TX	
Coryell, TX	
Knoxville, TN	.9193
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9984
Howard, IN	
Tipton, IN	
LaCrosse, WI	[1] .9796
LaCrosse, WI	
Lafayette, LA	1.0065
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9018
Tippecanoe, IN	
Lake Charles, LA	1.0512
Calcasieu, LA	
Lake County, IL	1.0853
Lake, IL	
Lakeland-Winter Haven, FL	.9716
Polk, FL	
Lancaster, PA	1.0776
Lancaster, PA	
Lansing-East Lansing, MI	1.0469
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	[1] .8542
Webb, TX	
Las Cruces, NM	[1] .8423
Dona Ana, NM	
Las Vegas, NV	1.2618
Clark, NV	
Lawrence, KS	[1] .9409
Douglas, KS	
Lawton, OK	[1] 1.0286
Comanche, OK	
Lewiston-Auburn, ME	[1] .9666
Androscoggin, ME	
Lexington-Fayette, KY	.9808
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	1.0035
Allen, OH	
Auglaize, OH	
Lincoln, NE	.7913
Lancaster, NE	
Little Rock-North Little Rock, AR	1.0491
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8700
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0104
Lorain, OH	
Los Angeles-Long Beach, CA	1.3166
Los Angeles, CA	
Louisville, KY-IN	1.1027
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0152
Lubbock, TX	
Lynchburg, VA	.8955
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	1.0467
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0893
Dane, WI	
Manchester-Nashua, NH	.9613
Hillsboro, NH	
Merrimack, NH	
Mansfield, OH	.9240
Richland, OH	
Mayaguez, PR	.5689
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
San German, PR	
McAllen-Edinburg-Mission, TX	.8980
Hidalgo, TX	
Medford, OR	.9923
Jackson, OR	
Melbourne-Titusville, FL	.9614
Brevard, FL	
Memphis, TN-AR-MS	1.0492
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Miami-Hialeah, FL	1.1602
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0492
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1919
Midland, TX	
Milwaukee, WI	1.0306
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.0722
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.9336
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1590
Stanislaus, CA	
Monmouth-Ocean, NJ	.9713
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9265
Ouachita, LA	
Montgomery, AL	.9534
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	[1] .9223
Delaware, IN	
Muskegon, MI	[1] .9589
Muskegon, MI	
Naples, FL	[1] 1.1559
Collier, FL	
Nashville, TN	1.1642
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2360
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9641
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1.0952
New Haven, CT	
New London-Norwich, CT	1.0517
New London, CT	
New Orleans, LA	1.0186
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	[1] 3378
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1801
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8665
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9730
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.3334
Alameda, CA	
Contra Costa, CA	
Ocala, FL	[1] .9658
Marion, FL	
Odessa, TX	[1] 1.0457
Ector, TX	
Oklahoma City, OK	1.0480
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	[1] 1.0758
Thurston, WA	
Omaha, NE-IA	.9622
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	1.0286
Orange, NY	
Orlando, FL	1.0135
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	[1] .9013
Daviess, KY	
Oxnard-Ventura, CA	1.1859
Ventura, CA	
Panama City, FL	[1] .8955
Bay, FL	
Parkersburg-Marietta, WV-OH	1.0302
Washington, OH	
Wood, WV	
Pascagoula, MS	[1] 1.1340
Jackson, MS	
Pensacola, FL	.9063
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.1391
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1796
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0869
Maricopa, AZ	
Pine Bluff, AR	[1] .9092
Jefferson, AR	
Pittsburgh, PA	1.1529
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0278
Berkshire, MA	
Ponce, PR	.6883
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9892
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1393
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9132
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.1219
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	.9991
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	
Washington, RI	
Provo-Orem, UT	.9243
Utah, UT	
Pueblo, CO	1.1232
Pueblo, CO	
Racine, WI	1.0078
Racine, WI	
Raleigh-Durham, NC	1.0295
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Reading, PA	1.0412
Berks, PA	
Redding, CA	1.0444
Shasta, CA	
Reno, NV	1.2472
Washoe, NV	
Richland-Kennewick, WA	.9749
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9472
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1300
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.9796
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0277
Olmsted, MN	
Rochester, NY	1.0207
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.0479
Boone, IL	
Winnebago, IL	
Scaramento, CA	1.2022
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.1053
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9117
Benton, MN	
Sherburne, MN	
Sterns, MN	
St. Joseph, MO	.9937
Buchanan, MO	
St. Louis, MO-IL	1.0653
Clinton, IL	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0268
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3264
Monterey, CA	
Salt Lake City-Ogden, UT	.9409
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.9599
Tom Green, TX	
San Antonio, TX	.9518
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.1559
San Diego, CA	
San Francisco, CA	1.3993
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.3538
Santa Clara, CA	
San Juan, PR	.6151
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1123
Santa Barbara, CA	
Santa Cruz, CA	1.2058
Santa Cruz, CA	
Santa Fe, NM	1.0716
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.1632
Sonoma, CA	
Sarasota, FL	1.0007
Sarasota, FL	
Savannah, GA	.9861
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	1.0020
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1388
King, WA	
Snohomish, WA	
Sharon, PA	1.0431
Mercer, PA	
Sheboygan, WI	.8771
Sheboygan, WI	
Sherman-Denison, TX	.8107
Grayson, TX	
Shreveport, LA	1.0931
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	1.0034

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.9779
Minnehaha, SD	
South Bend-Mishawaka, IN	.9756
St. Joseph, IN	
Spokane, WA	1.0916
Spokane, WA	
Springfield, IL	1.1340
Menard, IL	
Sangamon, IL	
Springfield, MO	.9380
Christian, MO	
Greene, MO	
Springfield, MA	1.0331
Hampden, MA	
Hampshire, MA	
State College, PA	1.0972
Centre, PA	
Steubenville-Weirton, OH-WV	.9624
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1738
San Joaquin, CA	
Syracuse, NY	1.0457
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0683
Pierce, WA	
Tallahassee, FL	.9041
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	1.0189
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8955
Clay, IN	
Vigo, IN	
Texarkana, TX-Texarkana, AR	1.0994
Miller, AR	
Bowie, TX	
Toledo, OH	1.1218
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.1128
Shawnee, KS	
Trenton, NJ	1.0465
Mercer, NJ	
Tucson, AZ	1.0502
Pima, AZ	
Tulsa, OK	1.0490
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0315
Tuscaloosa, AL	
Tyler, TX	1.0361
Smith, TX	
Utica-Rome, NY	.9690
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2754
Napa, CA	
Solano, CA	
Vancouver, WA	[1]1.0617
Clark, WA	
Victoria, TX	[1].9265
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9914
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0758
Tulare, CA	
Waco, TX	.8914
McLennan, TX	
Washington, DC-MD-VA	1.1678
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9206
Black Hawk, IA	
Bremer, IA	
Wausau, WI	[1].9362
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0331
Palm Beach, FL	
Wheeling, WV-OH	.9869
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1190
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8979
Wichita, TX	
Williamsport, PA	.9930
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0366
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9193
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9489
Worcester, MA	
Yakima, WA	.9926
Yakima, WA	
York, PA	.9973
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.1231
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0610
Sutter, CA	
Yuba, CA	

[1] Approximate value for area.

TABLE IIIB.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	.7767
Alaska	1.4473
Arizona	.9268
Arkansas	.7800
California	1.0117
Colorado	.8656
Connecticut	1.0053
Delaware	.9116
Florida	.8640
Georgia	.8306
Hawaii	1.1584
Idaho	.8728
Illinois	.8915
Indiana	.8458
Iowa	.8092
Kansas	.8321
Kentucky	.8542
Louisiana	.8623
Maine	.8785
Maryland	.9185
Massachusetts	1.0305
Michigan	.9362
Minnesota	.8892
Mississippi	.8016
Missouri	.8261
Montana	.8775
Nebraska	.7258
Nevada	1.0113
New Hampshire	1.0080
New Mexico	.9719
New York	.8747
North Carolina	.8568
North Dakota	.8309
Ohio	.9192
Oklahoma	.8776
Oregon	.9513

TABLE IIIB.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Pennsylvania	1.0442
Puerto Rico	.5693
Rhode Island	[1].9328
South Carolina	.8031
South Dakota	.7621
Tennessee	.7768
Texas	.8423
Utah	.7823
Vermont	.8646
Virginia	.8641
Virgin Islands	[1] 1.0000
Washington	.9562
West Virginia	.9655
Wisconsin	.8314
Wyoming	.9658

[1] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If the HHA cost reporting period begins—	The adjustment factor is—
Aug. 1, 1985	1.0033
Sept. 1, 1985	1.0066
Oct. 1, 1985	1.0099
Nov. 1, 1985	1.0132
Dec. 1, 1985	1.0165
Jan. 1, 1986	1.0198
Feb. 1, 1986	1.0240
Mar. 1, 1986	1.0281
Apr. 1, 1986	1.0323
May 1, 1986	1.0365
June 1, 1986	1.0407

[1] Based on compounded projected market basket inflation rates of 4.6 percent for 1986 and 5.0 percent for 1987. These adjustment factors are subject to change based on later estimates of cost increases.

XI. Waiver of Delayed Effective Date

Although we are not required to publish our regulations 30 days before their effective dates, we customarily do so. However, we believe that, in this case, the public interest requires that this schedule of limits take effect July 1, 1985, without a 30-day delay in the effective date.

Through our proposed notice published May 14, 1985, we notified all HHAs affected by this schedule of limits not only of our intention to change our methodology but also of our intention to apply the new limits for cost reporting periods beginning on or after July 1, 1985.

In our last schedule of limits published on July 2, 1984 (49 FR 27276) we stated that "The schedule of limits . . . applies to the 12-month cost reporting period beginning on or after July 1, 1984 and remains in effect until publication of the new limits effective July 1, 1985." Absent publication of these limits effective July 1, both HHAs and intermediaries would be without specific guidance from HCFA about which limits apply for HHAs with cost reporting periods that begin on or after July 1, 1985 but before the delayed effective date. We believe that the accompanying confusion, disruption, and uncertainty to both the government and the provider community would not be in the public interest. Further, it would be administratively impracticable for HCFA to develop and publish an additional set of cost limits to be applied to HHAs that begin their cost reporting periods between July 1, 1985 and the delayed effective date.

In addition, because one-third of the participating HHAs begin their cost reporting periods on July 1, a delay in the effective date would mean that these cost limits would not apply to one-third of the HHAs until July 1, 1986. Delaying the effective date would thus permit these providers to avoid the Congressionally-mandated "by discipline" limits (see H.R. Rep. 208, 97th Congress, 1st Session 949 (1981)) based only on the fortuitous circumstance of when their cost years begin and would have a disproportionate effect on other HHAs with later cost periods. This result would also prejudice the public interest since savings to the Medicare Trust Fund would be lost and desirable changes in HHA behavior that will be brought about by this final notice would be delayed for one-third of the HHAs. We expect that the limits contained in this final notice will decrease the amount of inappropriate payment to HHAs and thereby increase the soundness of the Trust Fund. This result is clearly in the interest of Medicare beneficiaries as well as the Medicare program.

Although some HHAs commented that they need time to prepare for the schedule of limits contained in this notice, we believe that the process of HHAs' "tightening up" on their costs will be an ongoing one for all HHAs. All HHAs, regardless of when their cost reporting periods begin, will have, at a minimum, their entire cost reporting period (that is, 12 months) to bring their costs within the limits.

For all of the reasons stated, we find good cause to waive a delay in the effective date.

Therefore, we believe delay in the effective date of this schedule of limits would be unnecessary and contrary to the public interest, and we find good cause to waive a delay in the effective date.

XII. Regulatory Impact Analyses

A. Requirements

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–611), we prepare and publish a regulatory flexibility analysis for regulations, including notices such as this, unless the Secretary certifies that the notice would not have a significant economic impact on a substantial number of small entities. All HHAs are considered small entities under the Regulatory Flexibility Act (RFA).

In the proposed notice published on May 14, 1985, we explained that although the limits are not expected to have an incremental impact in FY 1986 exceeding $100 million, they would provide a strong incentive for significant behavioral changes by participating HHAs, thus resulting in significant changes in the industry. Further, the proposed limits would clearly have had a significant economic impact on a substantial number of HHAs. Therefore, we determined that both an initial regulatory impact analysis and an initial regulatory flexibility analysis were required, and published an initial combined analysis for public review and comment in the proposed notice.

The following discussion, in combination with the rest of this notice, constitutes both a final regulatory impact analysis in accordance with section 3 of E.O. 12291, and a final regulatory flexibility analysis, in accordance with section 604 of the RFA. This analysis, in combination with the other sections of this notice, responds to comments on the initial analysis and on the impacts that commenters claimed that the proposed limits would have on HHAs.

B. Summary of Comments Received on Impact of the Proposed Limits

Many of the comments received related, either directly or indirectly, to impact, as is obvious from the analysis in section IV of this notice. Most of the commenters asserted in one manner or another that the proposed limits would be too low, either as a result of per discipline application, or because of the percent of the mean proposed. Some specifically discussed the behavior

changes that they believed would result from the proposed limits. Others addressed the effects that they believed the limits would have on employees, beneficiaries, and the quality of care.

To the extent that particular comments dealt with the methods and data used to establish the limits, we have responded to them in section IV above. The discussion below responds to commenters' concerns with the expected effects of the limits.

C. Estimated Impact on Expenditures for HHA Services

We estimate that HHA limits set at 120 percent of the mean will result in a major impact on the HHA industry and yield total Medicare savings of about $105 million for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986.

Due to the staggered beginning dates of HHA cost reporting periods, those savings will be distributed among three Federal fiscal years (FYs) as follows:

	Million
Fiscal year:	
1985	7
1986	86
1987	12
Total	105

Note that these estimated savings are *not* just projected disallowances of costs in excess of the limits. We do not expect actual disallowances under these limits to be $105 million. Rather, the savings represent the difference between projected expenditures without any limits and projected expenditures with these limits. Although the savings include potential disallowances of costs in excess of the limits, we anticipate that over 50 percent of the savings will result from projected behavior changes on the part of HHAs, reducing costs per visit.

Of the total savings, about $47 million will be incremental savings in addition to the savings that would result from a continuation of the limits that are already in place. The incremental savings will be distributed among three Federal fiscal years as follows:

	Million
Fiscal year:	
1985	3
1986	38
1987	6
Total	47

These additional savings will result from refinements to the methodology, the use of more recent data, the level at which the limits are set, and incorporating the most recent estimates of Medicare home health utilization and expenditures.

We expect that the application of the limits by discipline will result in continuing improvements in management, recordkeeping, and cost reporting by most HHAs. Setting the limits at 120 percent of mean cost for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986 will provide a further incentive to contain costs through improved efficiency. This improvement in efficiency should result in a moderation in the rate of increase in average per visit costs. Because we expect improvements resulting from modifications in provider behavior to continue, we believe that the margin above the mean allowed in future schedules of limits can be reduced without adversely affecting efficiently operated HHAs. Therefore, we provide in this notice for limits set at 115 percent of mean cost, effective July 1, 1986, and at 112 percent of mean cost, effective July 1, 1987. (Under section 2319 of the Deficit Reduction Act of 1984, Pub. L. 98-369, 112 percent of the mean is the upper limit that Congress determined is appropriate for an efficiently operated skilled nursing facility.)

We estimate that setting the limits at 120 percent, at 115 percent, and at 112 percent will yield total savings of approximately $443 million for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1988. These savings will be distributed among the Federal fiscal years as follows:

	Million
Fiscal year:	
1985	7
1986	88
1987	135
1988	191
1989	22
Total	443

Of the total savings, about $247 million will be incremental savings in addition to the savings that would result from a continuation of the limits that are already in place. The incremental savings will be distributed as follows:

	Million
Fiscal year:	
1985	3
1986	40
1987	71
1988	119
1989	14
Total	247

D. HHAs Affected

As of May 31, 1985, there were about 5,640 HHAs participating in Medicare. Of these, more than 4,600 were freestanding agencies and about 1,000 were hospital-based agencies. We do not have reliable cost data on all of these HHAs since a significant number of these HHAs began operations within the last 18 months. However, we do have an accurate and detailed data base covering 2,824 HHAs, which represent about 50 percent of the present total population. This data base is comprised of all cost reports filed by HHAs that had 12-month cost reporting periods during the year that ended September 30, 1983.

We used the available data to study the impact that these limits could have on affected HHAs. Because we are not able to predict all of the behavior changes that HHAs may adopt when these limits are implemented, we cannot estimate how many HHAs may eventually have costs disallowed because they exceed the limits. However, *if the behavior of affected HHAs does not change*, more than 70 percent of the HHAs in our data base would exceed these limits in at least one discipline. This indicates that more than 70 percent of the HHAs currently participating in the Medicare program can be expected to change their behavior in response to the provisions of this notice, thus avoiding or minimizing the disallowance of costs in excess of the limits.

In the proposed notice, we pointed out that if this 70 percent figure were applied to all HHAs participating in the Medicare program, it would seem that around 3800 HHAs could exceed the limits for one or more disciplines during cost reporting periods beginning on or after July 1, 1985. Many commenters apparently did not realize that this projection assumed that HHA behavior did not change, and responded as if we believed that 70 percent of all HHAs would actually exceed their limits. However, the proposed notice carefully pointed out that, *because* these limits give about 70 percent of all HHAs a strong financial incentive to change their behavior, we anticipate that those HHAs that finally experience actual disallowances will be in the minority. The reasons for this are discussed in section XII E. below.

Individual HHAs frequently commented that the proposed limits would disadvantage them more than the other classifications of HHAs with which they compete. This was typically claimed by rural HHAs and by

freestanding HHAs, despite the table we published showing that more urban hospital-based HHAs would be affected than any other group.

The following table shows our latest estimate of how the impact of these limits will be distributed among urban and rural, hospital-based and freestanding HHAs in the data base.

TABLE.—DISTRIBUTION OF IMPACT OF LIMITS SET AT 120 PERCENT OF THE MEAN, ASSUMING NO BEHAVIOR CHANGE

Type	Location								
	Urban			Rural			All		
	Number in data base	Number over a limit	Percent over	Number in data base	Number over a limit	Percent over	Number in data base	Number over a limit	Percent over
Hospital-based HHAs	261	219	83.9	192	141	73.4	453	360	79.5
Freestanding HHAs	1,412	971	68.8	959	672	70.1	2,371	1,643	69.3
All HHAs	1,673	1,190	71.1	1,151	813	70.6	2,824	2,003	70.9

E. Expected Changes in Behavior

Under existing limits, an HHA will exceed its limits only if its aggregate cost per visit exceeds its aggregate limit. Under the per discipline limits, high-cost disciplines will no longer be subsidized by low-cost ones, with the result that many HHAs that would have been below continued aggregate limits will exceed one or more of the per discipline limits, *if they do not change their behavior.* However, HHAs have many opportunities to minimize or avoid the impact of per discipline limits by changing their behavior. Therefore, we do not believe that these changes will actually result in that large an increase in the number of HHAs experiencing disallowances.

We expected that many of the HHAs commenting on the proposed notice would assess the impact of the proposed limits by comparing them directly to their current patterns of reported per visit costs. We were concerned that this sort of analysis could result in agencies believing that they would exceed one or more discipline limits by more than need be the case, and, in the proposed notice, explained changes that could result in minimization or complete avoidance of disallowances. As explained in a response to a public comment in section IV.E of this notice, a number of agencies, which are apparently adversely affected by application of the limits by discipline, will be able to reduce or escape such impact merely by classifying their costs correctly.

Although more than 70 percent of HHAs are projected to be over at least one limit (at 120 percent of the mean) if no management changes occur, we expect less than half will eventually experience actual disallowances of costs in excess of these limits. The limit for *each discipline* is set well above the average cost for that discipline. As the table below shows, a substantial majority of HHAs will be able to furnish each service at a cost below the limit. Of 12,142 total disciplines in the data base, only 4382, or 36.1 percent, are projected to exceed the applicable limit at 120 percent of the mean.

Discipline	Number of HHAs in data base	Number of HHAs over limit	Percent of HHAs over limit
Skilled nursing care	2,819	1,173	41.6
Physical therapy	2,363	799	33.8
Speech pathology	1,738	585	33.7
Occupational therapy	1,332	422	31.7
Medical social services	1,218	426	35.0
Home health aides	2,672	977	36.6

As noted in the proposed notice, we expect HHA behavior to change both in terms of management and cost reporting. In general, an HHA will have increased incentives to ensure that each type of service it furnishes is delivered efficiently and cost-effectively. For example, an HHA could more carefully control the input costs for any discipline over the limits. We expect many HHAs to review more closely salaries (particularly administrative salaries), staffing levels, staff productivity, time on site per visit, travel time, and administrative costs. We believe greater emphasis also will be placed on the accurate classification on the cost report of cost by function. This also should provide HHAs with more accurate information on the relative cost-effectiveness of each of the disciplines they furnish, which will encourage improved management and increased agency productivity for those HHAs with disciplines that would exceed the limits if they did not modify their behavior.

As noted in Section XII. C above, the increased efficiency which will result from these changes should allow for a reduction in the margin above the mean allowed in future schedules without adversely affecting efficiently operated HHAs. Since all agencies will be aware of the reduction in the level of the limits to 115 percent of the mean on July 1, 1985 and to 112 percent of the mean on July 1, 1987, they have more than an adequate amount of time to make necessary changes in their operations. Therefore, we do not anticipate any significant increase in the number of agenices experiencing actual disallowances as a result of the reductions in the level of the limits in July 1986 and July 1987. In addition, more accurate cost reports will improve the quality of the data we collect on HHA costs, which will benefit our program administration and afford a better basis for policy development.

Some HHAs commented that one of the strategies an agency could adopt would be to discontinue furnishing any discipline for which the costs exceeded the per visit limit. It was suggested that this would be a common and widespread response if per discipline limits were issued in final. We agree that it is inevitable that some HHAs would consider this, but we do not believe it would be widespread. As noted in the proposed notice, we expect about 1100 agencies to exceed the aggregate limits for cost reporting periods beginning on or after July 1, 1984 and before July 1, 1985. These agencies certainly experience as strong an incentive to discontinue a high-cost discipline as would an HHA with only one discipline over a limit.

Application of a limit to each discipline's cost separately will not affect HHAs that have no costs in excess of the limits. However, those HHAs that currently benefit from the ability to subsidize high-cost disciplines by low-cost disciplines, as permitted under the existing limits, will be more likely to have their disallowed costs increased by the use of per discipline limits. As discussed above, there are many ways an HHA could reduce its costs and thus avoid incurring the full disallowance it would otherwise experience under these limits.

Per discipline limits will have the most severe impact on those HHAs that have costs over the limits for *all* the disciplines they furnish. These HHAs will have to make substantial changes in their operations in order to minimize the effect of the limits. We expect that some high-cost HHAs may determine that both the amount of their costs in excess of the limits and the operational changes necessary to bring these costs down are unacceptable, and thus may choose to

cease participating in the Medicare program. However, we wish to point out that HHAs have increased greatly in numbers and diversity of services furnished in recent years. As noted in the proposed notice, we believe that there will still be more than a sufficient number of HHAs to serve the beneficiary population, even if a number of the higher cost HHAs eventually choose to cease providing services to Medicare patients.

F. Effects on Quality of and Access to Services for Beneficiaries

A number of commenters asserted that implementation of the limits as proposed would adversely affect beneficiaries' access to services and the quality of the HHA services they did receive. These comments were often linked to statements concerning the effect of the prospective payment system for inpatient hospital services on the demand for HHA services. Many commenters claimed that hospital patients are being discharged earlier and sicker, and with greater need for HHA services. They argued that these limits will result in fewer services being furnished to beneficiaries at the same time that more services are needed.

We recognize that the average inpatient length of stay is decreasing, that patients are being discharged earlier, and that the volume of home health services has increased over the last few years. The trends of decrease in length of stay and increase in home health services utilization both pre-date the inception of the prospective payment system. Nonetheless, it is reasonable to consider that the incentives of that system have contributed to both trends to some extent. However, we do not believe it is reasonable to imply that these trends, in conjunction with per discipline limits on HHA costs, must necessarily result in adverse health outcomes for Medicare beneficiaries.

These limits will be applied to payment for per visit costs. They will not affect the number of visits an agency may furnish. Earlier discharges may be expected, in some cases, to result in more frequent visits in the immediate post-hospitalization period. Thus, the trend of decreasing length of stay is likely to increase the demand for HHA services. However, increases in the volume of services, in themselves, should not increase costs per visit. Rather, increases in volume of services should afford opportunities to achieve economies of scale. Such economies, in turn, afford an agency the opportunity to use the resulting savings to either reduce its own per visit expenditures, increase the quality of its services, or both.

Given the recent trends of growth in HHA services, both in terms of numbers of HHAs and volume of services, we do not expect these limits to greatly affect the availability of or access to services for beneficiaries.

G. Alternatives Considered

As is made clear in other parts of this final notice, there were many points at which we considered various alternatives in developing these limits. In particular, each of the provisions of the methodology summarized in section III of this notice could have been handled differently, just as we could have chosen a different percentage of the mean at which to set the limits. We considered commenters' suggestions that we defer implementation of per discipline limits until July 1, 1986. Further, we have reconsidered our proposal to promulgate limits at 115 percent of the mean in 1986 and 112 percent in 1987 in this final notice.

The number of possible alternative schedules of limits and strategies for implementation is very large. Nonetheless, we recognize that the impact of these limits is primarily dependent on two choices we have made among the alternatives considered: the application of the limits on a per discipline basis, and the setting of the limit level at a particular percent of the mean for each discipline. In both cases, we have discussed the basis of our choices in section III, above.

It is difficult to assess the impacts of these decisions separately. In estimating the savings we expect to achieve under these limits, we assumed that many of the HHAs that benefit from cross-subsidization between disciplines would be able to avoid or minimize their costs in excess of the limits. Thus, we would attribute only about $14 million of the incremental savings to the effect of application of the limits by discipline. However, the behavior changes adopted by HHAs in response to these limits are one of the probable effects of the limits, as we discussed above.

The greatest portion of the quantifiable impact of these limits, that is, of the estimated savings, must be attributed to setting the limits at 120 percent of the mean. At the 120 percent level, even if we were to apply the limits on an aggregate basis, approximately 36 percent of participating HHAs would be expected to have costs in excess of the limits. We believe that much of the existing cost variation among HHAs is not attributable to factors related to costs necessary for the efficient delivery of needed health services. Other providers of services, which experience the same uncontrollable differences in the costs of their inputs as do HHAs, do not exhibit the same proportion of high-cost services.

As stated in the proposed notice, we have come to believe that it is necessary to provide high-cost HHAs increased incentives to bring their expenditures into line with the costs incurred by efficiently operated HHAs. Some commenters responded adversely to this statement, alleging that our own analysis showed that 70 percent of all HHAs would be adversely affected, and that this widespread impact must affect more than just the high-cost services and agencies. We must point out, again, that not all changes of behavior can reasonably be characterized as adverse impacts. As pointed out above, the limit for *each discipline* is set at 120 percent of the mean cost per visit for that discipline. By definition, our methodology results in limits for a discipline that are set well above the average costs, based on the actual reported costs of a substantial proportion of participating HHAs. Given the data available to us, we do not think the current range in per visit costs is justified. Thus, we are setting the proposed limits at 20 percent above mean cost per visit, and reducing them to 15 percent and 12 percent above mean cost, respectively, for subsequent cost reporting periods. Use of a percentage accommodates input cost variables not accounted for by the methodology, and allows HHAs an extended period over which they can bring their costs under better controls, while at the same time ensuring that we reimburse only those costs necessary for the efficient delivery of services.

H. Conclusion

In summary, the changes in methodology, improved data, and an updated market basket index result in limits that will yield greater program savings than would result from merely inflating previous limits. However, the benefits expected to result from these limits are not confined to the Medicare savings. An HHA that brings its cost down to the limits, or below, should benefit from improved management. The beneficiaries and other patients it serves could be expected to benefit in turn.

The Medicare program savings resulting from these limits will be experienced as costs by the affected HHAs. Further, some economizing measures adopted by HHAs in response to these limits, such as measures that could affect access to or quality of care, could be viewed as adverse consequences, or costs. However, we believe the limit levels are reasonable

and we expect the majority of HHAs to be able to furnish services within them. Also, § 405.460(f) provides an exceptions process that allows for adjustment of a provider's limits under specific conditions described in that section. Therefore, we conclude that these limits will result in benefits greater than anticipated costs, are not unnecessarily burdensome, and otherwise meet the regulatory standards required by E.O. 12291 and the Regulatory Flexibility Act.

XIII. Paperwork Burden

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

(Sec. 1861(v) of the Social Security Act (42 U.S.C. 1395x(v)); 42 CFR 405.460)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: June 27, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 28, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-15965 Filed 7-1-85; 9:37 am]

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Friday
July 5, 1985

Part V

Small Business Administration

13 CFR Part 108

Loans to State and Local Development Companies; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4; Amdt. 134]

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: 13 CFR Part 108 delineates regulations for development companies. These proposed rules strengthen the current regulations for development companies in general and 503 certified development companies (CDC) specifically. In addition, recent experience has warranted the addition of new provisions for 503 companies.

DATE: Comment must be received on or before September 3, 1985.

ADDRESS: Written comments, in duplicate, may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, (202) 653-6076.

SUPPLEMENTARY INFORMATION:

Background

The Development Company programs were established and authorized under the Small Business Investment Act of 1958 to provide a source of long term financing for small business concerns and their growth, modernization and expansion. These programs essentially provide fixed asset financing which is a basis for expanding employment and increasing the economic base of an area.

Originally, the SBA's development company activities were limited to the State Development Company program (501 or SDC Program) and the Local Development Company program (502 or LDC Program). Although both were direct loan programs, the 502 program is now a guaranty loan program. The 501 program requires a special legislative act of a state legislature creating the SDC. A 502 company has a local focus and serves an area smaller than a state. The 502 program was designed to assist small businesses in acquiring fixed assets while 501 program loans can be made for a broader range of uses.

In 1980, the Certified Development Company Program (503 or CDC program) was established. While the 503 program is for the same purpose as the 502 program, it is innovative in its funding mechanism. The 503 program provides funds through a long term fixed rate debenture issued by a CDC and guaranteed by SBA. The Federal Finance Bank purchases all debentures. The debentures carry maturities of 15, 20, and 25 years and a fixed interest rate, based on treasury rates for like maturities plus an additional fraction of a percent to cover administrative expenses. Although the debenture is 100% guaranteed, the debenture proceeds can finance no more than 50% (SBA has established and administrative limit of 40%) of the total cost of a given project. Of the remaining project costs, 10% must be provided by the 503 company and 50% by a private sector lender. The structuring of this financing results in an active participation by private sector lending institutions and government. This cooperative effort is strengthened by the membership requirements that must be met by a 503 company, including representation from private lending institutions, appropriate level(s) of local government, local business concerns, and community groups. The Agency views the 503 program as a private sector-public sector partnership which has a non-profit approach to furthering economic development in its area of operations.

Rules Applying to All Development Companies

These proposed rules amend the current rules pertaining to development company programs in general and add requirements specific to the 503 program.

Section 108.1 is amended by adding a new subsection which requires that financing provided under Part 108 must demonstrate a "significant impact" on the community in which the project is located. "Significant impact" is defined.

Section 108.2 is amended by adding definitions of a certified development company, a 503 debenture, a 503 loan, and the SIC code. The definition of "plant" is revised for clarity with respect to leasehold improvements.

Proposed § 108.4 thru § 108.7 would regroup operational and reporting requirements applicable to all development companies operating pursuant to Title V of the Small Business Investment Act. In addition, proposed § 108.4 would define a prohibit self-dealing transactions without prior SBA approval. Proposed § 108.5 would require development companies to report any litigation involving the company or its officers, directors or employees in an official capacity and to produce, at their own expense, any documents requested by SBA. Section 108.6 is reserved for future use.

Proposed § 108.8 would regroup eligibility requirements presently applicable to all development company financings, including those found in Part 120 of the existing regulations. In addition, § 108.8(e) sets forth new criteria applicable to construction or modification of facilities on leased real estate. These criteria would require a long term lease to the small concern and that SBA be granted a collateral position to fully secure its exposure.

Proposed § 108.9 would change the existing regulation relating to projects which include funds resulting from tax-exempt financings. Such projects would not be eligible for section 503 financing unless the Agency's lien position would be equal or superior to that of the portion so financed. In addition, any such tax exempt obligations issued by the 503 company must also be subordinate to SBA's position.

Proposed § 108.10 is a savings provision which would assure the legality of transactions consummated prior to promulgation of regulatory changes.

Rules Applicable to 503 Development Companies

Proposed § 108.503 would set forth the objectives of the 503 program to ensure that the intent and purpose of the program is fulfilled by requiring each project to meet at least one of the following economic development objectives: (1) A project requirement of one (1) job opportunity for each $15,000 of 503 debentures; (2) project(s) that contribute to the community's economic development by stimulating other business development, bringing new income into the area or diversifying and/or stablizing the area's economy or (3) contributing to a national objective, (i.e., increased productivity, expansion of exports, minority business development, assisting manufacturing firms, or assisting businesses in distressed areas). These requirements are intended to permit flexibility in those cases where a project does not meet the formula requirement of one (1) job opportunity per $15,000 of debenture amount. The $15,000 requirement is based on data from the current portfolio. This section also provides for the monitoring of job opportunities actually created.

Proposed § 108.503-1 would clarify operational requirements that must be met by 503 companies. The SBA grants 503 companies a right to issue guaranteed debentures. The Agency is meeting its fiduciary responsibilities to the taxpayers by establishing rules for the operations of 503 companies, including capability requirements and permissible activities. 503 companies

would be required to put economic development ahead of private profit. A major factor is the composition of membership in the 503 company. In order to ensure an active mix and wide cross-section of commercial lending expertise and local community and business involvement, specific membership requirements, including those governing the Board of Directors, are proposed in these rules. The rules pertaining to the professional staff of the 503 company would continue to allow, as now, contracting for services relating to the staff functions.

This section would also address area of operations, expansion of area of operations, concentration of 503 companies, and propose to codify current practice.

Proposed § 108.503–2 is technical and delineates the certification process for 503 company certification and expansion of its area of operations as well as the disposition of the certificate. Public Notice of the intent to certify a company would be required under the proposed rules, in order to ensure local awareness and to provide for public comment, consistent with the objective of local community involvement.

Proposed § 108.503–3 outlines the operational requirements for 503 companies and would require the Annual Report to include an assessment of the needs of the community and the 503 company's accomplishments in meeting those needs. This Section would also include a requirement that a CDC maintain a diversified portfolio.

The proposed rule would increase the minimum level of activity to ensure that a 503 company continues to play an active role in its community.

Proposed § 108.503–4 defines projects eligible and ineligible for section 503 financing. Projects primarily for investment purposes are inconsistent with general SBA policy. Limited use assets are not a best use of SBA resources because they cannot easily and effectively be redeveloped for alternative uses in the event of failure of a specialized small concern.

Any business would be ineligible unless the owners have demonstrated management capability. The 503 Program is primarily designed and intended to assist existing healthy small businesses for their growth, modernization or expansion.

Proposed § 108.503–5 would clarify which costs may be included in the Project Cost and thereby furnished with 503 funds. In addition, it would set forth certain costs which could be included in the amount of the debenture, even through such costs are not Project Costs.

Proposed § 108.503–6 would set forth the amounts which the 503 company may require the small concern to pay.

Proposed § 108.503–7 sets forth requirements for interim financing for the construction of fixed assets. This section codifies present practice in financing construction in this program.

Proposed § 108.503–8 would impose certain limitations on the private sector portion of the financing. These limitations are proposed to protect the Agency's interest as well as the interest of the small concern.

Proposed § 108.503–9 would set forth the amount, maturity and interest rate of the debenture, as well as loan conditions, closing procedures, and potential prepayment premiums. These provisions would add 10 year debentures for machinery, equipment and leasehold improvements, provide a minimum debenture size of $25,000, and codify other present practices in the 503 program.

Proposed § 108.503–10 would restate the present requirement regarding the 503 Company's injection in the project with no change in substance from the existing regulation.

Proposed § 108.503–11 would codify SBA's existing practice regarding use by the 503 companies of a Central Fiscal Agent for disbursement and repayment of debentures. This provision would also codify the present practice of utilizing Reserve and Escrow Accounts. The interest earned on these accounts accrues to the benefit of the small concern but constitutes a funded reserve for loss. Such accounts are necessary to coordinate monthly loan payment dates with semi-annual debenture payment dates and to forestall delinquency in debenture payments.

Proposed § 108.503–12 would codify loan closing responsibilities.

Proposed § 108.503–13 would set forth loan and debenture servicing procedures, prohibitions and fees. In addition, it would prohibit assumption of 503 loans without the Agency's consent and would permit deferments under specified conditions.

Proposed § 108.503–14 would codify responsibility for foreclosure and the liquidation of assets.

Proposed § 108.503–15 would set forth the Agency's review procedures and provide procedures for suspension or revocation of a 503 company's certificate. In addition, this section would permit the Agency to charge a fee for such audits.

Regulatory Impact

SBA has determined that this proposal taken as a whole does not constitute a major rule for the purposes of Executive Order 12291. In this regard we are certain that the annual effect of this rule on the economy will be less than $100 million. In addition, this proposed rule, if promulgated as final, will not result in a major increase in costs or price to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity or innovation.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, certain provisions of this proposal, if promulgated in final form, may have a significant economic impact on a substantial number of small entities. The following analysis of those provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

1. Proposed § 108.8 incorporates eligibility requirements already applicable which are in Part 120 of the regulations. Part 120 applies to all SBA financial assistance to businesses.

In addition, it clarifies the Agency's policy regarding loans to third parties who rent premises to an eligible concern. Since lessors are not eligible for assistance, the agency will not approve such a project unless the eligible concern's interest in the property is tantamount to ownership.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no reporting or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this proposal. An exemption from coverage of this rule for small entities would not be feasible or consistent with the applicable statutory provisions.

2. Proposed § 108.9 would change the existing regulation to provide that SBA would not participate in projects which include funds resulting from tax-exempt financings unless the Agency's lien position would be equal or superior to the lien position of the portion of the project so financed. The Agency has decided that subordination of its position to such "tax-exempt" portion of the project results in a double subsidy to such project which is not intended by section 503 of the Small Business Act.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no reporting or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this proposal. An exemption from coverage of this rule for small entities would not be feasible or consistent with the applicable statutory provisions.

3. Proposed § 108.503 and § 108.503–4 would constrain 503 eligibility for projects involving "limited use" assets and projects which involve types of businesses found by the Agency to have a high rate of failure or low economic impact.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no reporting or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this proposal. An exemption from coverage of this rule for small entities would not be feasible or consistent with the applicable statutory provisions.

4. Proposed § 108.503–6 would permit a 503 company to require an applicant small concern to deposit with the CDC the sum of $1000 or 1½% of the amount of the requested debenture, whichever is less. This deposit would be refunded if the small concern does not voluntarily withdraw its application. The deposit is intended to compensate the 503 company for processing applications which are later withdrawn when an applicant finds other financing or changes its plans.

This section also permits the 503 company to charge a small concern (or a lender) a one-time fee, not to exceed 1½% of the non-Federal portion of the permanent financing, for procuring such financing if permitted by a written agreement executed by the 503 company and the small concern.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no reporting or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this proposal. An exemption from coverage of this rule for small entities would not be feasible or consistent with the applicable statutory provisions.

All other significant changes contained herein affect only the 503 company.

The following sets forth the collection of information or recordkeeping requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Subsection	OMB approval Nos.
§ 108.4(a) Fiscal Year	3245–0192
§ 108.4(c) Good character	3245–0192, 3245–0178
§ 108.5(a) Records	3245–0074
§ 108.5(b) Preservation of Records	3245–0192
§ 108.5(c) Litigation Reports	3245–0192
§ 108.5(d) Reporting Changes Not Subject to SBA Prior Approval	3245–0192
§ 108.5(e) Reports to Owners or Members	3245–0192
§ 108.5(f) Document Availability	3245–0192
§ 108.503(b) Objectives	3245–0071
§ 108.503(c) Monitoring	3245–0074
§ 106.503–1(a) General	3245–0073
§ 108.503–1(c) Area of Operations	3245–0073, 3245–0192
§ 108.503–1(d) Membership	3245–0073
§ 108.503–2(a) Application for Certification	3245–0073
§ 108.503–2(b) Public Notice	3245–0192
§ 108.503–2(c) Transfer and Surrender of Certification	3245–0192
§ 108.503–3(c) Level of Activity	3245–0192
§ 108.503–3(d) Records	3245–0192
§ 108.503–3(f)(1) Reporting Requirements	3245–0074
§ 108.503–3(f)(2) Reporting Requirements	3245–0074
§ 108.503–3(f)(3) Reporting Requirements	3245–0178, 3245–0192
§ 108.503–5(d) Expenditures Made in Anticipation of a 503 Loan	3245–0192
§ 108.503–6(b) Deposits	3245–0192
§ 108.503–6(d) Disclosure of Charges to SBA	3245–0071
§ 108.503–7(a) Certification of Project Completion	3245–0192
§ 108.503–7(c) Use of Construction Escrow Account	3245–0192
§ 108.503–8(b) Terms of Private Sector Financing	3245–0192
§ 108.503–9(a) Application	3245–0071, 3245–0192
§ 108.503–13(b) Specific Servicing Functions	3245–0192
§ 108.503–15(c) Operational Review	3245–0192

List of Subjects in 13 CFR Part 108

Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

PART 108—[AMENDED]

Part 108—Loans to State and Local Development Companies would be amended as follows:

1. The authority citation for Part 108 continues to read as follows:

Authority: Sec. 5, Pub. L. 85–536, secs. 210, 308, Pub. L. 85–690, unless otherwise noted.

2. The table of contents for Part 108 would be amended by adding §§ 108.4 through 108.10 numerically under the centerheading "General", by removing §§ 108.503 through 108.503–8 and by adding a new centerheading entitled "Assistance under Section 503", consisting of new §§ 108.503 through 108.503–15.

* * * * *

General

Sec.

* * * * *

108.4 Operational requirements.
108.5 Records and reports.
108.6 [Reserved].
108.7 Violations based on false filings and nonperformance of agreements with SBA.
108.8 Borrower requirements and prohibitions.
108.9 Participation with tax exempt financing.
108.10 Savings clause.

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Assistance Under Section 503

108.503 Program objectives.
108.503–1 Eligibility requirements for 503 companies.
108.503–2 Certification.
108.503–3 Operational requirements for 503 companies.
108.503–4 Project eligibility.
108.503–5 Eligible and ineligible uses of 503 loan proceeds.
108.503–6 Costs which may be charged to the small concern by the 503 company.
108.503–7 Interim financing.
108.503–8 Private sector financing.
108.503–9 503 Debenture financing.
108.503–10 503 Company injection.
108.503–11 Central fiscal agent.
108.503–12 Loan closing.
108.503–13 Servicing loans and debentures.
108.503–14 Liquidation of 503 loans and security.
108.503–15 Oversight and evaluation; suspension and revocation.

3. Section 108.1 would be amended by adding a new paragraph (b) and by redesignating existing paragraph (b) as (c). New paragraph (b) would read as follows:

§ 108.1 Policy.

* * * * *

(b) Financing provided under this part must demonstrate to SBA's satisfaction that it will result in significant impact in the community where the business or project is located. "Significant impact" may be demonstrated (1) on the basis of jobs being created or retained which would not have been possible without such financing; (2) community economic development being demonstrated including diversification or stabilization of the economy within the community, or, (3) achieving a national objective such as: Increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC Codes 20–49), and assisting businesses in distressed areas. Loans made to acquire plant, as defined in § 108.2(i) of this part, shall be made in conformity with the same program objectives as set forth under § 108.503(b)–(d) for the 503 program.

* * * * *

§ 108.2 [Amended]

4. Section 108.2 *Definitions* would be amended by revising paragraph (c) thereof as follows:

* * * * *

(c) "Small business concern" or "small concern" means a business concern which qualifies as small under Part 121 of this Chapter.

5. Section 108.2 *Definitions* would be further amended by adding new paragraph (d)(3) to read as follows:

* * * * *

(d) * * *

(3) A certified development company (hereafter sometimes referred to as "503 company") is a development company as defined in paragraphs (d) (1) or (2) of this section which meets the requirements of § 108.503 of this part and is certified by SBA to operate pursuant to section 503 of the Small Business Investment Act, 15 U.S.C. 697.

* * * * *

6. Section 108.2 *Definitions* would be further amended by adding new paragraphs (g), (h), and (i); redesignating present paragraph (h) as (j). Such new and revised subsections to read as follows:

* * * * *

(g) "503 debenture" means a debenture issued by a 503 company and guaranteed by SBA ("503 guaranty") for sale, the proceeds of which are to be used to make one or more loans to small concerns pursuant to § 108.503–5 of this part.

(h) "503 loan" means a loan made to a small business concern from the proceeds of a 503 debenture.

(i) "plant" means any long-term fixed asset which may include land, buildings, machinery, and equipment employed or to be employed by the small business concern in the conduct of its business whether it be of an industrial or commercial nature.

7. Section 108.2 *Definitions* would be further amended by adding a new paragraph (k) to read as follows:

* * * * *

(k) "SIC Code" means the Standard Industrial Classification Manual as prepared by the Office of Management and Budget and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

8. Sections 108.4, 108.5, 108.6, 108.7, 108.8, 108.9, and 108.10 would be added immediately after § 108.3 to read as follows:

§ 108.4 Operational requirements.

(a) *Fiscal year.* Each development company shall establish a fiscal year which shall not be changed without SBA prior written approval.

(b) *Place of business.* Each development company shall maintain a reasonably accessible place of business, shall have a separately listed telephone number, and shall be open to the public during normal business hours.

(c) *Good character.* A development company shall possess continuing good character. Such character will be deemed to exist where all the directors, officers, employees and members or shareholders possess good character. Officers, directors, and the manager of day-to-day operations of a development company shall file SBA Form 912 Statement of Personal History. Good character shall be deemed absent if any one of the listed persons is (1) currently incarcerated, on parole or probation, (2) is under indictment for, or has been formally charged with or convicted of a felony, or (3) suffered an adverse final civil judgment in a case involving a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or relationships, or (4) made a misrepresentation or false statement to SBA, as defined in § 108.7(a)(2). Any change affecting this requirement shall be promptly reported to SBA.

(d) *Prohibition of Self-dealing.* (1) Self-dealing by the development company, its board of directors, members, employees, and other related parties (as hereafter defined) to the prejudice of the small concern, the development company, or SBA is prohibited.

(2) The development company's loan application to SBA shall contain a full disclosure statement from the development company and from the small concern relative to all relationships described in § 120.102–10 of this Chapter, between the small concern and the development company, any person employed by the development company or regularly serving the company [e.g. professional staff as defined in § 108.503–1(b)(3)] or its associate [as defined in § 120.2–2 of this Chapter], all herein refered to as "related parties", that exist or have existed within six months prior to the date of the development company's application. Where no such relationships exist, the development company and the small concern shall so certify.

(3) Without prior written approval of SBA, a development company shall not permit a relationship to exist or to be created between the development company or related parties and a small concern to be assisted under this Part or while such assistance is outstanding, if such relationship could constitute a conflict of interest, or the appearance thereof, as between the development company or related parties and the small concern. As examples of such relationships and for illustrative purposes only, the following relationships are prohibited without prior SBA approval:

(i) A development company shall not, directly or indirectly, provide financial assistance to a small concern in which the development company or a related party has any financial interest.

(ii) A development company shall not require a small concern to purchase real or personal property, or services (including insurance and legal services) from the development company, a related party, or a designee of either.

(iii) A development company shall not provide financial assistance to be used in repaying or refinancing an existing debt due the development company or a related party unless SBA shall have first made a written determination, upon the basis of evidence in the file, that:

(A) The terms of the existing indebtedness are causing undue hardship to the small concern; and,

(B) Refinancing extension or modification of the outstanding indebtedness is not available.

(e) *Compliance with other laws.* Development companies and projects financed with federal assistance are subject to all applicable laws, including (without limitation) the civil rights laws (see Part 112, 113, and 116 of these Regulations, as well as Part 117 when adopted).

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the Office of Management and Budget under control number 3245–0192. Reporting and recordkeeping requirements in paragraph (c) have been approved by the Office of Management and Budget under control numbers 3245–0192 and 3245–0178)

§ 108.5 Records and reports.

(a) *Records.* Financial records of a development company including books of accounts are to be maintained in accordance with generally accepted accounting principles. All financial records and minutes of meetings of members, stockholders, directors, executive committees or other officials, and all documents and supporting material relating to a development company's transactions shall be kept at its principal office and shall be currently posted (within 45 days): *Provided, however,* That portfolio items held by a custodian pursuant to written agreement shall be excepted from this requirement. Financial reports furnished to SBA shall make complete disclosure of matters relevant to the Act and regulations.

(b) *Preservation of records.* (1) Each development company shall preserve, for the periods required by the Internal Revenue Service and generally accepted accounting practices and in a manner

that permits the immediate location of such records, such documents which are the basis for or related to the financial statements (including 503 loans) required from development companies.

(2) Notwithstanding the provisions of paragraphs (b)(1), a miniaturized reproduction of any records may be substituted for the original and preserved for the required time in the required manner: *Provided, however,* That the development company shall:

(i) Cause a duplicate reproduction to be made on a current basis and stored separately from the original reproduction for the time required;

(ii) At all times have available facilities for clear projection and the production of clear facsmile enlargements.

(c) *Litigation reports.* When a development company becomes a party to litigation or other legal proceedings, (including any action by the development company, or by a security holder thereof in a personal or derivative capacity, against an officer, director, employee or other member of such development company in an official capacity) it shall file a written report by certified mail with SBA within 10 working days, describing the proceedings, the identity of and the development company's relationship to other parties involved and, upon request by SBA, submit copies of the pleadings and other documents specified. Where such proceedings have been terminated by settlement or final judgment, the development company shall promptly advise SBA of the terms thereof.

(d) *Changes to be reported.* Any change of a development company's name, address, telephone number, officers, directors, membership, professional staff or Articles, not otherwise requiring SBA prior approval, shall be reported to SBA with an SBA Form 912 where applicable (see § 108.4(c)) not later than thirty days after these events. A development company shall submit notice of changes to SBA via Certified Mail or other form of delivery from which a receipt of acceptance is obtained. Reports and requests filed pursuant hereto shall be deemed approved unless the development company is otherwise notified by SBA within sixty days after receipt thereof. Approval shall be contingent upon full disclosure of all relevant facts, subject to any conditions SBA may prescribe.

(e) *Reports to owners or members.* In addition to other specified reporting requirements, the development company shall furnish the SBA field office with a copy of any general notice, letter, or other publication concerning the financial operations of the development company or any of its portfolio concerns provided to its owners or members.

(f) *Expense of documents.* A development company shall make available, at its own expense, documents or copies requested by SBA.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the OMB under control number 3245–0074. Reporting and recordkeeping requirements in paragraphs (b), (c), (d), (e), and (f) have been approved by the OMB under control number 3245–0192)

§ 108.6 [Reserved]

§ 108.7 Violations based on false filings and nonperformance of agreements with SBA.

(a) The following shall constitute a violation of these regulations:

(1) Nonperformance of any of any the requirements of any note issued to, or assigned to, SBA or of any written agreement with SBA.

(2) Document(s) submitted to SBA which include a false statement knowingly made, a misrepresentation, or intentional failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made.

(b) A violation of these regulations by a small concern shall allow SBA to accelerate any indebtedness of such concern issued to, held or guaranteed by SBA or, in the case of a lease assigned to or held by SBA, to terminate such lease.

§ 108.8 Borrower requirements and prohibitions.

(a) *Principals of concern receiving assistance.* The availability of personal resources of the owner or owners of the small concern shall not disqualify such concerns for assistance under development company progams.

(b) *Credit requirements.* Section 120.103–2 (except paragraph (g)) of this Chapter also apply to development company assistance.

(c) *Eligible concerns.* A development company loan may be approved only to assist an identifiable small concern in accomplishing a sound business purpose. Whether the small concern is a proprietorship, partnership, or corporation is not a determining factor with respect to eligibility. A business may qualify as small, provided it meets the requirements of Part 121 of this Chapter.

(d) *Eligibility of passive small concerns ("alter ego").* A concern is ineligible if it is a passive business (i.e. one not requiring a regular and continuous activity): *Provided, however,* That such passive small concern may be assisted if the applicant acquires the plant with the proceeds of a 503 loan and leases it to an otherwise eligible small operating concern, and all of the following conditions are met;

(1) The applicant concern is a business that is organized for profit.

(2) The operating small concern is an eligible small business and the proposed use of proceeds would be eligible for such assistance if the operating small concern were the owner of the property that is owned or to be owned by the applicant.

(3) The proceeds of the loan to be used to benefit directly such applicant will be used only to acquire or improve real or personal property for the use of such operating small concern of the entire facility.

(4) The ownership interest(s) in the applicant shall be completely identical with and in the same proportion as the ownership interest(s) in such operating small business concern, and this identity of interests shall remain unchanged until the 503 loan is repaid in full or sooner if SBA gives approval to a change.

(5) Collateral includes an assignment of the lease between the applicant and the operating small concern and a lien on the property itself. The lease shall be for a term of not less than the term of the 503 loan.

(6) The operating small concern must be either a guarantor or co-borrower, and the owners of the operating small concern and of the applicant must also guarantee the loan.

(7) The operating small concern must lease the entire facility and may sublease a part under conditions set forth in § 108.503–4(a).

(e) *Leasehold improvements.* In order to be eligible for development company assistance to construct or modify a facility on leased land, (except as in paragraph (d) or if the land is owned by the development company) the remaining term of the lease must be of such duration so as to be tantamount to ownership of the asset, or the remaining term of the lease must equal or exceed the greater of the useful life of the facility or the term of the debenture. In such instances, financing is permitted for the construction or conversion of a plant on said leased land: *Provided, however,* That the land owner allows the SBA to secure lien positions on the land and improvements sufficient to fully secure its exposure. Where granting a lien position is not possible because, for example, the lessor is a governmental or quasi-governmental entity, utility or trust, assistance may nevertheless be provided where there is

a valid, assignable lease with a remaining life two times the term of the debenture. In those instances where the remaining term of the lease is equal to or greater than the useful life of the facility and no lien on the property is obtainable, such financing may be considered if other collateral sufficient in value to fully protect the interests of government is offered.

(f) *Ineligible concerns.* A development company shall not assist a small concern:

(1) If such small concern is to be relocated and such relocation could result in a substantial increase of unemployment in any area of the country or could result in the small concern's avoidance of its obligations;

(2) If the loan is intended to finance a plant that is not located in the United States or its possessions;

(3) If the loan to be made with the proceeds of a debenture guaranteed by SBA will provide funds to an enterprise primarily engaged in the business of lending or investing; or to any otherwise eligible enterprise for the purpose of financing investments not related or essential to the enterprise. This requirement prohibits the granting of financial assistance to banks, life insurance companies, finance companies, factors, investment companies and other businesses whose stock in trade is money and who are engaged in placing capital or providing financing in a way intended to secure profits from its employment.

(g) *Other loan eligibility requirements.* Sections 120.101–2 and 120.102–1, 120.102–5, and 120.102–9 of this chapter shall apply to loans made or guaranteed under this part.

(h) *Availability of other financing.* Application for financial assistance will not be accepted for processing and no assistance may be extended unless the development company can demonstrate to the satisfaction of SBA that the desired financing is not available from non-Federal sources on reasonable terms. Evidence shall exist which indicates that such financing necessary to complete the project is not available to the small concern, on terms comparable to the development company programs contained in this Part.

§ 108.9 Participation with tax exempt financing.

A development company may use debenture or loan proceeds to make loans for projects also financed through obligations the income of which is exempt from Federal income taxes: *Provided, however,* That SBA's lien position shall not be subordinate to loans made from the proceeds of such tax-exempt obligations. Should the development company be authorized to issue such tax-exempt obligations, the SBA loan or debenture shall not be subordinated to such tax-exempt obligation.

§ 108.10 Savings clause.

The legality of transactions consummated pursuant to provisions of these regulations in effect at that time shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

9. Sections 108.503 through 108.503–8 would be removed and a new centerheading "Assistance under Section 503", consisting of §§ 108.503 through 108.503–15 would be added to read as follows:

Assistance Under Section 503

§ 108.503 Program objectives.

(a) *Statute.* The relevant statutory provisions will be found at 15 U.S.C. 697.

(b) *Objectives.* The purpose of this program is to foster economic development in both urban and rural areas by providing a portion of long term fixed-asset financing for small business projects through the guaranty by SBA of debentures issued by 503 companies. In order to qualify for such guaranty, the 503 company must demonstrate to SBA's satisfaction that the project will have significant impact in its community. Subject to paragraph (c) of this section, each project shall achieve at least one of the following three economic development objectives:

(1) *Jobs.* To effect, at a minimum, one "job opportunity" per $15,000 of 503 debenture assistance. The job opportunity estimate shall be based on objective data and the basis for such estimate shall be submitted with the application for guaranty (SBA Form 1244). "Job opportunity" means:

(i) Full time (or equivalent) permanent employment created as a direct result of the project within two years of the sale of the debenture, or

(ii) Full time (or equivalent) permanent employment retained that would have been lost to the community but for the project.

(2) *Community or area development.* A project which is expected to stimulate other business development in the community, bring new income into the area, or assist the community in diversifying and stabilizing its economy. Applications for such projects shall be accompanied by written documentation demonstrating the community impact. Such project may be approved only if the average job opportunity costs for the 503 company's 503 portfolio do not exceed $15,000 per job opportunity.

(3) *National objectives.* A project which will result in increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC codes 20–49), and assisting businesses in distressed areas as defined by the U.S. Department of Labor. Such project may be approved only if the average job opportunity costs for the 503 company's 503 portfolio do not exceed $15,000 per job opportunity.

(c) *Job opportunity average.* The 503 company shall maintain an average of at least one job opportunity per $15,000 of 503 financing. This average shall be based on 503 job opportunities actually provided within the first two years after the project is complete and shall be measured at the end of the 503 company's fiscal year.

(d) *Monitoring.* On an overall basis, the 503 company shall promote and carry out activities consistent with the aforementioned objectives. Each 503 company shall monitor the job opportunities provided by its 503 loans. Each 503 company shall report in its Annual Report the job opportunities actually provided by each project computed in accordance with paragraph (c) of this section, and shall justify an investment average in excess of $15,000 per job opportunity, setting forth measures to reduce such average (See § 108.503–3(f)(2)). The 503 company shall maintain, and have available in its records for SBA inspection, a certification from the small business concern assisted that supports the job opportunity figures which shall be based on its employment data.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the OMB under control number 3245–0071. Reporting and recordkeeping requirements in paragraph (c) have been approved by the OMB under control number 3245–0192. Reporting and recordkeeping requirements in paragraph (d) have been approved by the OMB under control numbers 3245–0192 and 3245–0074)

§ 108.503–1 Eligibility requirements for 503 companies.

(a) *General.* SBA is authorized to guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified development company. The full faith and credit of the United States is

pledged to the payment of all amounts so guaranteed. Such debentures (herein sometimes referred to as 503 debentures) will be issued within certain limits solely for the purpose of assisting identifiable small business concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. For the purpose of this section, development companies qualified to participate in this program (herein referred to as "503 companies") shall be formally certified by SBA on the terms and conditions contained herein, consistent with the intent of Congress. To qualify, a development company must demonstrate to the satisfaction of SBA, each of the following.

(b) *Organizational requirements.* The purpose of a 503 company shall be to foster economic development in its area of operations; any benefits flowing to shareholders, members or other related parties shall be merely incidental to such purpose. Each 503 company shall be organized as a non-profit corporation under applicable laws and shall be in good standing. Those 503 companies organized on a for-profit basis and certified by SBA or those having an application for certification on a for-profit basis pending prior to the effective date of these regulations shall be allowed to continue as participants. Each applicant for certification and each 503 company shall demonstrate to SBA's satisfaction as a condition of such company's participation in the program that it has:

(1) *Management.* Adequate management ability in its Board of Directors, officers and professional staff to direct and administer its functions prudently. An executive director or other person managing day-to-day operations is considered an officer of the 503 compamy. Legal and accounting functions may be contracted out.

(2) *Board of directors.* The Board of Directors shall be composed of individuals are are involved in the economic development of the area of operation and chosen from the membership by the stockholders or members to represent at least three of the four elements specified in paragraph (d)(2) of this section. However, no single element may control. The board members shall be responsible officials of the organizations they represent and at least one of these directors must possess commercial lending experience. Such board shall meet at least quarterly to make management decisions for the 503 company, and shall be responsible for the loan making and servicing decisions of the staff, as specified in paragraph (d)(3) of this section. Regardless of the number of board members, a quorum of such Board shall never be less than five members. For a quorum, one member must possess commercial lending experience or the 503 company must document that a commercial lender, or loan review committee including commercial lender(s), has favorably recommended approval of loan or servicing actions.

(3) *Professional staff.* Each 503 company shall have a full-time professional staff. The number of personnel may vary but there must be at least one qualified person available during regular business hours. Such staff shall be adequate and qualified by training and/or experience satisfactory to SBA to market the 503 program throughout its area of operations, package and process loan applications, assist in closing loans, and service the 503 company's loan portfolio. The marketing, packaging, processing, and servicing functions may be contracted out only if those performing the functions have prior related experience and training and are qualified individuals or organizations who reside or do business in the 503 company's area of operation. Any contract for these functions shall be approved annually by SBA and shall prohibit self serving actions which would increase costs to a small business borrower.

(4) *Management service.* A 503 company shall have the ability to provide, or cause to be provided, management advice and services to small concerns.

(5) *Financial capability.* A 503 company shall have the ability to sustain its operations on a continuous basis from reliable sources of funds, such as income from services rendered, contributions from government or other financial sponsorship or from the 503 company's capital. Applicant shall submit with its application (SBA Form 1246) a budget for the 503 company's operations approved by its Board of Directors which demonstrates that adequate resources will be available to perform the 503 company functions. Where the professional staff functions are provided by a 503 company's affiliate as defined in Part 121.3(a), the approved budget of such affiliate may be substituted.

(c) *Area of operations.* (1) A 503 company shall be certified to operate in a defined area which shall not exceed the boundaries of its State of incorporation: *Provided, however,* That such company may (i) operate in more than one State if a state line bisects a contigous economic area, as determined by SBA, in which case such company may operate within such area, or (ii) with SBA prior approval expand its area to include a Territory or possession of the United States.

(2) The proposed area of operation shall be sufficient to support the level of activity prescribed by § 108.503–3(c) but not greater than can be sustained by their membership and staff, and as permitted by this subsection. An applicant shall demonstrate the need for its services in its proposed area of operation to SBA's satisfaction. Such showing shall discuss why another 503 company is needed in a given area if a 503 company already operates there, provide a plan to avoid duplication or overlap, and demonstrate how the applicant proposes to meet the three objectives specified in § 108.503(b) without specialization in a particular industry or form of enterprise. The applicant shall also provide evidence that it will receive the active support of the government for its area, e.g. city government for citywide 503 companies, county government for countywide operations, etc.

(3) There shall be no limit on the number of citywide, county, or multi-county 503 companies per State, subject to paragraphs (c) (1) and (2) of this section: *Provided, however,* That no State shall be permitted more than one statewide 503 company.

(4) Application for expansion of the area of operations. (i) Application for expansion of area of operations shall be by written request to the SBA District Office or Branch Office serving the area in which the 503 company's headquarters are located, containing the following:

(A) Definition of the new area of operation.

(B) Justification of the need for expansion to the new area, including:

(*1*) Identification of existing 503 companies in area;

(*2*) Description of the services the 503 company can provide that others are not providing, and

(*3*) Description of the adequacy of the 503 company's staffing to serve the proposed area.

(C) A list of proposed members, by sub-area and groups as proposed.

(D) A certified copy of the Resolution of the Board of Directors to expand as proposed.

(E) A projection of the 503 company's activity in existing and new areas for the next two years.

(ii) Prior to approval, SBA shall provide notice to all 503 Companies

presently servicing the proposed area, allowing 30 days for comment.

(iii) A 503 company proposing to expand shall also provide public notice as set forth in § 108.503–2(b).

(d) *Membership.* The 503 company must be representative of the State, or subdivision thereof, in which the company operates. Evidence of such representation shall include the following:

(1) The 503 company must have at least 25 members or stockholders. Members or stockholders must be geographically representative of the 503 company's area of operations. No person or concern may own or control more than ten percent of the 503 company's stock or voting membership.

(2) The membership must be representative of the following four groups:

(i) *Government* representation must be from the level of government corresponding to the area of operations, unless prohibited by law. Such representation shall be from the government organization responsible for economic development functions. For example, a multi-county 503 company shall have representation or evidence of support from each county government or from a regional government council encompassing its area of operation, and a statewide 503 company shall have representation or evidence of support from the State government department responsible for economic development. Where prohibited by law, another form of active government participation satisfactory to SBA may be chosen. A county or multi-county 503 company should also have representation or evidence of support from the major cities in its proposed area. Multi-county 503 companies certified by SBA prior to the effective date of these Regulations shall have 18 months from the effective date of these Regulations to comply with this requirement.

(ii) *Private-sector lending institutions* representative of the area of operation such as banks, savings and loan institutions and others in the business of providing commercial long-term fixed asset financing;

(iii) *Community organizations* such as chambers of commerce operating within the area of operations, foundations, trade associations, colleges, universities and other organizations dedicated to economic development;

(iv) *Business concerns* that are representative of the area and the business population within the area.

(3) Local 503 companies may have a representative in the membership of broader based 503 companies (e.g., Statewide or Multi-county) that include the local 503 company's area of operation.

(e) *Permissible functions of a 503 company.* A 503 company shall provide financial assistance in participation with SBA only under Title V of the Small Business Investment Act and this Part. Such company may also help small concerns obtain other assistance from SBA by preparing loan applications, facilitating management and procurement assistance, and obtain assistance from other government and non-government programs. 503 companies are encouraged to marshall resources for the benefit of small business in a manner that will result in community economic development. A 503 company is not prohibited from participating in the 501 or 502 loan program if such company meets the qualifications set forth in § 108.501 or § 108.502. A Small Business Investment Company (SBIC) licensed by SBA may not be certified as a 503 company.

(f) *Required functions of a statewide 503 company.* A 503 company operating on a statewide basis shall comply with the eligibility and operational requirements for all 503 companies. In addition, such company shall:

(1) Foster economic development throughout the State.

(2) Demonstrate its compatibility with and relationship to existing 503 companies and;

(3) Provide development company assistance to those areas not being served by a 503 company.

(g) *Prohibition.* No officer, director, or manager of a 503 company may be an officer, director or manager of any other 503 company, except that the Board of Directors of a 503 company covering a broader area of operations may include a member or director of a local 503 company within the area of operations.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the OMB under control number 3245–0071. Reporting and recordkeeping requirements in paragraphs (b), (c), and (d) have been approved by the OMB under control number 3245–0073. Reporting and recordkeeping requirements in paragraph (c) have been approved by the OMB under control number 3245–0192)

§ 108.503–2 Certification.

(a) *Application for certification.* Application for certification as a 503 company shall be submitted on SBA Form 1246 hereby made a part of these regulations, to the SBA field office serving the area in which the prospective 503 company's headquarters are located. The field office shall forward the application and its recommendation, through the Regional Office, to the Director, Office of Economic Development, for final determination of eligibility. Qualified companies shall receive a certificate evidencing eligibility for participation in this program.

(b) *Public notice.* The proposed 503 company shall publish a notice in a newspaper of general circulation in the city, county or counties of the proposed area of operation, and shall furnish a certified copy to SBA within 10 days of the date of publication. Such notice shall include such appropriate information including the name and location of the proposed company, its purpose and area of operation, and the names and addresses of its officers, directors, and members. The public shall be afforded reasonable opportunity for the submission of written comments to the local SBA office.

(c) *Transfer and surrender of certificate.* A Certificate may not be transferred without SBA's prior written approval. Request for approval shall be accompanied by a plan to transfer the 503 company's portfolio to another 503 company or a participant in another SBA lending program for servicing. Upon receipt of the 503 company's request for transfer or in the event the 503 company surrenders its Certificate to SBA, SBA may conduct an examination or investigation of its affairs pursuant to § 310 of the Small Business Investment Act as amended. The 503 company's name will be removed from the published list of 503 companies.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the OMB under control number 3245–0073. Reporting and recordkeeping requirements in paragraphs (b) and (c) have been approved by the OMB under control number 3245–0192)

§ 108.503–3 Operational requirements for 503 companies.

(a) *Responsibilities.* A 503 company shall: (1) Offer its services to the business community in its area of operation and cooperate with financial institutions; (2) package and process loan applications; (3) close and service loans; (4) offer management services and (5) maintain the eligibility requirements set forth in § 108.503–1.

(b) *Diversified 503 Loan Portfolio.* A 503 company shall not concentrate its 503 loan portfolio in any one industry or type of business nor shall such portfolio be concentrated in new businesses. A "new business" is an entity which, together with any predecessor of such entity, has been in business for less than 2 years.

(c) *Level of activity.* In order to meet the needs of small business in its area of operation, a 503 company shall conduct active operations. For the purposes of this section, such company shall be presumed to be inactive if, during any full fiscal year, it has not provided financing under Title V of the Small Business Investment Act to at least two small concerns: *Provided, however,* That written justification for inactivity, acceptable to SBA, may rebut the presumption. Examples of acceptable justification may include recent entry into the program, a large number of small concerns assisted in the preceding fiscal year, or demonstration to SBA's satisfaction that the 503 Company has achieved its goals and has had a significant impact on its operating area.

(d) *Records.* The 503 company shall develop a system to ensure the following information and documents relating to its 503 loan portfolio are available for review at its principal office:

(1) A separate file for each 503 loan which shall contain all documents and material relating to the loan application submitted to SBA including the loan authorization and all correspondence relating to such loan prior to closing; all documents relating to the loan closing, including documents relating to the sale of debentures, evidence of the 503 company's injection and the amortization schedules; financial statements of the small concern, related correspondence, evidence of field visits, conditions of the collateral, and evidence of payment of taxes and insurance, and other items that have been reviewed.

(2) Rules for records and reports under § 108.5 also apply.

(e) *Accounting treatment for 503 loans and debentures.* For accounting purposes, a 503 company shall classify a 503 loan as an asset and a 503 debenture as a liability. Interest on the loan shall be income and interest on the debenture shall be an expense to the 503 company. The Reserve Account established by the Central Fiscal Agent (CFA) (See § 108.503–11) plus all interest earned thereon shall be classified as trust fund receipts which are a liability of the 503 company owed to the small concern. There shall be a corresponding long term asset equal to the aggregate of the Reserve Account. Interest earned on the Escrow Account established by the CFA is to be treated by the 503 company as a funded reserve for loss. Accordingly, the asset will be reflected as a noncurrent asset and the liability will be reflected as a trust fund receipt. At the discretion of SBA, the Reserve Account and interest on Escrow Account will be applied to delinquent accounts. Amounts in the Reserve Account that exceed the requirement established by SBA (see § 108.503–11 (b) and (c)) will be returned to the borrower or applied to the outstanding loan balance.

(f) *Reporting requirements.* (1) Each 503 company shall submit to the SBA field office serving the area where its headquarters are located, within 90 days after the end of its fiscal year, an annual report, in duplicate, containing financial, operational, management, and other information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for the Preparation of the Annual Report (SBA Form 1253). The financial statements contained in the annual report shall accompany a report of an opinion audit conducted in accordance with generally accepted auditing standards and submitted by a qualified independent public accountant; *Provided, however,* That financial statements of 503 companies with an outstanding portfolio of 503 loans less than $4 million may be submitted on no less than a "review" basis, as defined in "Statements on Standards for Accounting and Review Services #1 (published by the American Institute for Certified Public Accountants).

(2) The operational section of the Annual Report shall contain an assessment of needs and resources available as well as an explanation of the 503 company's 503 loan activity and other accomplishments for the year then ended and plans for the next year.

(3) Any change in stockholdings or membership in a 503 company, its board of directors, or in the information affecting the character status of the company (see § 108.4(c) and § 108.5) shall be promptly reported to SBA. In addition, Statements of Personal History (SBA Form 912) and personal resumes shall be filed on all new officers and directors and professional staff of a 503 company. Personal resumes for directors may be waived. Any changes in the 503 company's professional staff shall be reported in writing promptly to the SBA office serving the area of operations.

(4) SBA shall not process 503 loan applications from a 503 company while a required report is outstanding or, in the opinion of SBA, incomplete.

(5) See also § 108.503–13(b).

(g) *Restriction on equity participation.* The 503 company may not provide assistance to a small concern in which either such 503 company or its associates (as defined in § 120.2–2 of this chapter) own an equity interest, nor may a 503 company or any of its associates acquire an equity interest in any concern assisted by such 503 company.

(h) *Substitution of a 503 company.* A 503 company in good standing may assume all or part of the portfolio of another 503 company within its area of operations or contiguous thereto where the original 503 company is unable or unwilling to service its portfolio and such assumption is approved by SBA. An assumption shall not be approved if the transferee does not have a demonstrated capability to service such loans. See §108.503–2(c).

(Reporting and recordkeeping requirements in paragraphs (c), (d), and (f) have been approved by the OMB under control number 3245–0192. Reporting and recordkeeping requirements in paragraph (f) have been approved by the OMB under control number 3245–0178. Reporting and recordkeeping requirements in paragraph (f) have been approved by the OMB under control number 3245–0074)

§ 108.503–4 Project eligibility.

(a) *Eligible projects.* The proceeds of 503 debentures are to be used for the purpose of assisting identifiable small concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. Each project must comply with § 108.503(b). Section 120.101–1 (b), (c) and § 120.130–2 and § 120.107–7 of this Chapter also apply. Up to fifteen (15) percent of the total project may be leased if (1) the project is to construct a new facility, (2) reasonable projections of growth indicate the applicant concern will need additional space within three years and (3) it is not feasible to build an addition to the building in the future. In purchasing existing facilities, at least 51% of the space must be occupied by the applicant concern and the balance may be leased to another concern, provided that proceeds from the 503 loan are not used to remodel or convert the rental space.

(b) *Ineligible projects.* Ineligible projects include, but are not limited to:

(1) Those whose purpose is to finance the acquisition, construction, improvement, or operation of real property which is, or is to be, held primarily for sale or investment and is not to be used in connection with the applicant's otherwise eligible business.

(2) Assets so limited in potential use or marketability that they could not be resold in the event of failure of the borrower, or if sold, the price could result in a substantial loss on the 503 debenture. Such financing may be considered if other collateral sufficient

in value to fully protect the interests of government is offered.

(3) Applicant businesses of any kind, where the majority of owners, or the management does not have demonstrated management capability.

(4) Airplanes and automotive equipment (cars and trucks of any kind).

(c) *Restrictions*—(1) *Working Capital.* Proceeds from the sale of a 503 debenture may not be used for working capital purposes or to refinance prior obligations of the small concern, unless a portion of the funds are needed to replace expenditures made in anticipation of a 503 loan (see § 108.503–5(d)).

(2) *Statutory Ceiling.* Proceeds from the SBA 7(a) loan program shall not (i) be used to replace working capital invested in the 503 project by the small concern as the 503 company's injection, nor (ii) be used to finance part of the 503 project. No such loan shall be approved if the total amount outstanding for the benefit of any small concern from the Business Loan and Investment Fund established under Section 4(c) of the Small Business Act, exceeds $500,000.

(3) *Small Business Investment Companies (SBICs)* may (i) provide joint financing in projects, (ii) provide financing to the small concern who then invests in the project, or (iii) replace funds invested by the small concern, *provided:*

(A) such funds shall be considered to be from federal sources as defined in § 108.503–8(a), and;

(B) such funds shall be subordinated to the 503 loan, and;

(C) such funds shall not be repaid at a faster rate than the debenture.

§ 108.503–5 Eligible and ineligible uses of 503 loan proceeds.

(a) *Project cost.* Project cost shall include the fixed asset(s) to be financed and professional fees directly attributable and essential to the project (e.g. surveying, engineering, architectural, title insurance and related costs, etc.). Administrative costs (reserve account, processing fees etc.), while not included in project cost, may be included in the 503 debenture amount (see § 108.503–9(a)(2)). For the purpose of determining the total project cost, eligible costs include those necessary to acquire, construct, convert or expand assets, including but not limited to: land, site improvements (e.g. grading, streets, parking lots, utilities, landscaping), buildings, machinery and equipment, and remodeling/conversion of buildings.

(b) *Contingency reserve.* A contingency reserve not to exceed 10% of construction costs is allowable for projects involving construction. The debenture amount will be reduced in $1,000 increments by the amount that the unused contingency fund exceeds 2% of the debenture amount.

(c) *Ineligible costs.* The following costs shall not be construed as part of the project cost under the 503 program and they may not be financed by the 503 debenture:

(1) Management services. While a small concern may engage a management firm for continuous assistance or counseling, the cost is ineligible for purposes of 503 project cost determination.

(2) Financing costs and fees (e.g. finders fees, commitment fees, application fees, origination fees, etc.) whether on the 503 loan or on the private sector loan.

(3) Cost and fees associated with tax exempt financing such as trustee fees, underwriting fees, advertising costs and interest thereon.

(4) Franchise fees and other costs that do not contribute directly to the physical asset.

(d) *Expenditures made in anticipation of a 503 loan.* When an expenditure is made in anticipation of a 503 loan prior to notice to SBA, it may not be included in project cost unless the applicant files a written notice with the 503 company and SBA within 60 days after expenditure. When notice is given to SBA prior to an expenditure, there is no time limitation

(Reporting and recordkeeping requirements in paragraph (d) have been approved by the OMB under control number 3245–0192)

§ 108.503–6 Costs which may be charged to the small concern by the 503 company.

(a) *Charges and fees.* The following charges or fees on the 503 loan are permitted:

(1) Administrative costs of the loan. These costs may be recovered by charging a processing fee not to exceed one and one-half percent (1.5%) of the amount of the debenture, payable at closing. These costs shall cover loan packaging, processing, and other administrative functions performed by the 503 company's non-legal professional staff through loan closing.

(2) Legal fees related to loan closing: *Provided, however,* That legal fees of counsel representing the 503 company in excess of $2,500 shall be borne by the 503 company unless approved by SBA in writing. Such fees shall be based on time and hourly charges and shall be collected by the 503 company and paid to its closing attorney.

(3) A periodic service charge not to exceed 2 percent (2.0) per annum on the original outstanding balance of the 503 loan: *Provided, however,* That a service charge in excess of one-half of one (0.5) percent shall require the prior written approval of SBA, based on evidence satisfactory to SBA, of substantial need.

(b) *Deposits.* A 503 company may require a maximum deposit of $1,000 or 1 and ½% of the amount of the 503 debenture, whichever is less, at the time it accepts an application for processing. A written agreement shall specify that the small concern shall receive a refund of the deposit when the 503 debenture proceeds are disbursed by the Central Fiscal Agent (see § 108.503–11) if the loan is approved, or within 10 days of denial if the loan is not approved. If the small concern decides to withdraw its application prior to funding, the 503 company is authorized to deduct administraive costs incurred in the packaging and processing of the loan request that are reasonable, necessary and documented before refunding any balance of the deposit.

(c) *Additional charge for private sector financing.* 503 companies may charge a one-time fee not to exceed 1½% of the non-Federal permanent financing (exclusive of purchase money mortgages and 503 company injection) for services actually rendered by the 503 company pursuant to a written agreement setting forth the services to be performed by the 503 company. This amount, which is not included in eligible project costs, may be paid by the private sector lender or the small concern, but not both.

(d) *Disclosure of charges to SBA.* The loan application submitted to SBA by the 503 company shall disclose the full amount of all fees and charges, together with names of the recipients and a description of the services rendered.

(Reporting and recordkeeping requirements in paragraphs (a) and (b) have been approved by the OMB under control number 3245–0192. Reporting and recordkeeping requirements in paragraph (d) have been approved by the OMB under control number 3245–0071.)

§ 108.503–7 Interim financing.

(a) *Certification of project completion.* Interim financing, except for that portion provided by injection, may be necessary for those projects involving construction or significant remodeling. Except as provided in paragraph (c) of this section, projects financed in part by a 503 loan must be completed in accordance with terms and conditions of the authorization before SBA issues its guarantee of the 503 debenture. Following completion of the project, the interim lender shall certify to the 503 company that, to the best of its knowledge, no adverse change in the condition of the small concern has

occurred since the issuance of the 503 authorization. The small concern shall certify to the 503 company that there has been no change in the condition of the small concern and shall furnish current interim financial statements. Before SBA issues its guaranty of the 503 debenture, the 503 company shall issue an opinion that to the best of its knowledge no adverse change has intervened since SBA approval, including but not limited to:

(1) Deterioration of the borrower's financial condition to the extent that it would endanger the borrower's ability to meet debt service on the 503 loan.

(2) Fraud or misrepresentation as defined by § 108.7(a)(2) of this Part by the small concern in the loan application and financial exhibits submitted to SBA.

(3) A filing under the Bankruptcy Code by or against the small concern.

(4) Assignment of the small concern's assets for the benefit of its creditors.

(5) Receivership of the small concern, imposed by a third party creditor.

(6) Forfeiture of the corporate charter of the small concern.

(7) Discontinuance of the business.

(b) *Source of interim financing.* There are no restrictions on the source of interim financing provided:

(1) The terms and conditions of such financing are acceptable to SBA; and

(2) The interim lender is not associated with the small concern. (See § 120.2–2 of this chapter.)

(3) If the interim lender lacks the experience or qualifications to monitor construction and/or progress payments properly, the SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager.

(4) A 503 company with adequate financial capacity may provide interim financing and shall not be restricted by § 108.503–6.

(c) *Use of construction escrow account.* If acquisition of machinery and equipment or other portions of a project (e.g. a parking lot) represents a relatively minor portion of the total project cost and it has been contracted for delivery at a specified price and date, but cannot be installed or delivered prior to acquisition or completion of the plant, the 503 debenture may be sold and the proceeds authorized for acquisition of such assets may be held in escrow by the Central Fiscal Agent (see § 108.503–11) or a local title insurance company or bank. After approval by the 503 company and the SBA, disbursement from such accounts shall be supported by invoices and made payable jointly to the small concern and the supplier in order to assure authorized use of debenture proceeds. Funds at a local institution remaining undisbursed after 1 year shall be returned to the Central Fiscal Agent.

(Reporting and recordkeeping requirements has been approved by the OMB under control number 3245–0192)

§ 108.503–8 Private sector financing.

(a) *General.* The maximum private participation shall be required in each project. Financing for at least fifty percent of the cost of each project, as defined in § 108.503–5, shall be derived from non-Federal sources, which are not associates of the small concern, as defined in § 120.2–2 of this chapter. No more than half of that non-Federal financing may be derived from other Government sources: *Provided, however,* That obligations issued by a governmental unit, the income of which is exempt from Federal income taxation and which are not backed by the credit or taxing power of a governmental unit, shall be deemed non-governmental. (See § 108.9)

(b) *Terms of private sector financing.* (1) The maturity of the non-Federal or private sector financing shall be at least seven years when the debenture is for a term of 10 years (i.e. for machinery, equipment, and leasehold improvements) and the greater of ten years or half the maturity of the 503 debentures for all other purposes. Balloon payments must be justified in the loan report and clearly identified in the loan authorization. Under no circumstances may a balloon payment be due in less than 10 years. The SBA must determine in writing that the balloon payment will not adversely affect the small concern's ability to satisfy its financial obligation to SBA.

(2) If private sector financing is subordinate to the 503 loan, prepayment shall be permitted only with prior SBA written approval and where, in SBA's opinion, it will substantially benefit the small concern.

(3) SBA shall not participate in a financing unless the interest rate on the non-Federal and/or private sector financing is legal and reasonable.

(4) SBA shall not participate in a financing unless the terms and conditions of the private financing are acceptable to SBA.

(5) SBA shall not participate in a financing unless the private lender has the capacity of or has arranged for servicing adequate to protect SBA's interests.

(6) The non-Federal or private lender shall agree to notify SBA in writing within 30 days after a default and 30 days prior to a foreclosure sale.

(Reporting and recordkeeping requirements have been approved by the OMB under control number 3245–0192)

§ 108.503–9 503 debenture financing.

(a) *Application.* Upon application (SBA Form 1244) to the field office serving the area where the small concern is located, SBA may guarantee debentures (SBA Form 1242) of the 503 company. The proceeds of such debenture shall be used to finance part of a fixed asset project for a small concern on either a loan or lease basis subject to the following conditions:

(1) *Purpose.* Subject to § 108.503(b), such debenture is issued for the purpose of assisting an identifiable small concern in accomplishing a sound business purpose in compliance with the regulations of this Part.

(2) *Amount.* The aggregate amount of such debenture shall not exceed the amount of the loan or loans to be made from the proceeds of the debenture other than any excess attributable to the permitted administrative costs (as specified in § 108.503–5) of such loan. The minimum amount 503 debenture that may be guaranteed by SBA shall not be less than $50,000 unless SBA determines that a smaller debenture is reasonable and necessary. In no case shall a debenture be less than $25,000.

(3) *Interest rate.* The interest rate on 503 debentures shall be a rate determined by the purchaser, but not less than a rate determined from time to time by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable U.S. obligations with comparable maturities. Such rate can be obtained from the appropriate SBA field office.

(4) *Maturity.* The maturity of the 503 debenture shall be 15, 20, or 25 years, except that debentures issued for the purchase of machinery, equipment, or leasehold improvements may be for a term of 10 years..

(5) *Subordination.* SBA may permit the subordination of the 503 debenture(s) to any other debt or obligation of the 503 company: *Provided, however,* That any debt or obligation incurred by such company to satisfy the injection requirement (§ 108.503–10) shall be subordinated to the 503 debenture. (See also § 108.9.)

(6) *Multiple loan debenture.* A 503 company that has demonstrated management ability, adequate financial capacity, and has shown an active use of this program may, with SBA Central Office prior approval, be allowed to issue a 503 debenture to fund more than one loan.

(7) *Collateral.* All loans to small concerns provided from the proceeds of a 503 debenture shall be so secured (as determined by SBA) as to reasonably assure repayment. SBA shall require that the 503 company's injection pursuant to § 108.503–10 be subordinated to the loan made from the proceeds of the 503 debenture. In the event of default on the debenture, the liability of the 503 company shall be limited to all payments made by the small concern to the 503 company and the collateral securing the defaulted loan. All collateral shall be insured against such hazards and risks as SBA may require and the insurance policies shall provide for notice to the 503 company and to SBA in the event of their impending lapse.

(8) *Proof of use of proceeds.* At the time of closing of the debenture, the 503 company shall submit evidence satisfactory to SBA that the proceeds will be used in accordance with the statutory purposes. Such evidence shall include, but not be limited to a certification (SBA Form 1429) that proceeds will be used for eligible project costs and, if the Plant is owned by the development company, proof that the small concern has the right to use the Plant for at least as long as the term of the debenture.

(9) *503 loan conditions.* (i) A 503 loan may not exceed the lesser of forty percent of total project cost (as defined in § 108.503–5), or an amount which, together with the outstanding balance of all other SBA financings to any one small business concern and its affiliates under Section 7(a), 15 U.S.C. 636(a), does not exceed $500,000: *Provided, however,* That for good cause shown, SBA may authorize a 503 loan up to fifty percent. Such cause shall be deemed to exist if a project meets all three objectives of § 108.503(b) and it can be demonstrated to SBA's satisfaction that without such authorization the project would be lost to the community.

(ii) Each loan to be made from the debenture proceeds shall be approved by SBA.

(iii) The terms and conditions shall be sufficient to assure timely payments by the 503 company on the debenture. Payments received after the 15th of each month shall be subject to a late payment fee equal to 5% of the late amount or $100, whichever is greater, payable to the CFA for remittance to holder. Such amount shall be assessed for each month the payment is not made. Late payments will not be accepted unless accompanied by such late payment fee.

(10) *503 lease conditions.* All conditions applicable to 503 loans set forth in this part shall be equally applicable to the leasing of assets by the 503 company to a small concern. In addition, the lease agreement between the 503 company and the small concern shall be for a term at least as long as the term of the 503 debenture; and the rent paid by the small concern during the term of the debenture shall be sufficient to retire principal and interest on all debts incurred by the 503 company in financing this project, and all related expenses, and may include a reasonable return on the 503 company's investment. (See also § 108.503–6 of this part.)

(11) *Loan/Debenture prepayment.* If the small concern exercise its right to prepay the 503 loans, a 503 company shall prepay the 503 debenture in an amount sufficient to repay the outstanding balance of the debenture with interest and any premium that may be required by the holder.

(b) [Reserved]

(Reporting and recordkeeping requirements have been approved by the OMB under control numbers 3245–0192 and 3245–0071)

§ 108.503–10 503 company injection.

The 503 company shall be required to inject into each project an amount equal to at least ten percent of the project cost, as defined in § 108.503–5 (exclusive of administrative costs). Such injection may come from any source, including the borrower small concern and such injection shall be subordinated to the 503 debenture. For the purpose of this paragraph, the 503 company may inject cash and property valued at fair market value received as a contribution to the 503 company or in exchange for shares of non-voting stock issued by the 503 company. Contributions or loans to the 503 company for such company's injection into a project may not be conditioned on the granting of voting rights, stock options, or any other interest in the 503 company or the small concern. The interest on such injection shall not exceed a rate which is legal and reasonable, and such injection shall not be repaid at a faster rate than the 503 loan.

§ 108.503–11 Central fiscal agent.

(a) *Services of a Central Fiscal Agent.* SBA shall appoint a Central Fiscal Agent (CFA) to act for the 503 company as the disbursement, collection and payment agent for 503 debentures and loans. The 503 company shall, in consideration of SBA's guaranty of the debenture, contract with the CFA as its agent and abide by the CFA procedures established to receive and disburse proceeds from the sale of the debenture, to receive from the small concern 503 loan payments and remit such payments pursuant to SBA's instructions. Each small concern receiving a 503 loan shall abide by these CFA procedures. The CFA may charge a processing fee as well as a monthly service fee, payable by the small concern, which shall be in addition to the 503 company's servicing fee. The CFA service fee shall be negotiated pursuant to a contract between the CFA and SBA and shall be published from time to time in the Federal Register. In negotiating any changes in fees, the Agency will accept public comments on these notice and consider these comments in establishing these fees.

(b) *Accounts maintained by the CFA.* (1) Escrow Account. The monthly installment received from the small concern shall be placed in an interest bearing Escrow Account, subject to withdrawal to meet the required semi-annual payment on the 503 debenture.

(2) *Reserve account.* Upon sale of the debenture, an amount equal to two montly payments shall be placed in an interest bearing Reserve Account. The Reserve Account and any interest earned/accrued shall not be available to the small concern until the loan and the debenture have been fully paid: *Provided, however,* That when the balance of the account exceeds the outstanding balance of the 503 loan, such excess funds may be released to the small concern. In addition, sufficient funds from the Reserve Account may be released at the small concern's request to meet the small concern's Federal income tax liability relating to earnings on the Reserve Account if there is no shortage in the Reserve Account, and all monthly installments are current. A small concern may make this request through its 503 company to the appropriate SBA field office at least 45 days prior to the filing of its Federal Income Tax Return. Such requests shall not be processed in amounts of less than $100.00.

(c) *Reserve and escrow account balances.* Any balance in either or both the Reserve and Escrow Accounts shall be used to make debenture payments in the event the small concern is delinquent in meeting its monthly payments. Any remaining balance in either Account shall be remitted to the small concern within 30 days after the 503 loan is paid in full.

§ 108.503–12 Loan closing.

The closing of the loan between the small concern and the 503 company is the responsibility of the 503 company. The debenture closing is the responsibility of the 503 company and the SBA.

§ 108.503–13 Servicing loans and debentures.

(a) *General.* The 503 company shall service the 503 loan according to the related instruments and the loan authorization until paid in full, subject to the conditions specified herein.

(b) *Specific servicing functions.* The 503 company shall conform to servicing standards of prudent lending. (1) The 503 company shall submit to SBA a quarterly written report on accounts in its portfolio which are sixty (60) days or more past due, explaining the reason(s) for non-payment, the steps that the 503 company is taking to bring the account(s) current, and advice regarding the payment status of all other financing involved in the project(s). Special interim reports on individual firms will be provided by the 503 upon request by SBA. (2) The 503 company shall review the financial statements, the small concern's payment of taxes and insurance, U.C.C. filings, and shall make field visits as necessary, or as requested by SBA. (3) Any other adverse trend, condition or information shall be reported to SBA promptly.

(c) *Prohibitions.* Without the prior written consent of SBA, the 503 company shall not: (1) Make or consent to any substantial alteration in the terms of any 503 loan instrument; (2) make or consent to release of collateral; (3) accelerate the maturity of any note; (4) sue upon any loan instrument; (5) waive any claim against any borrower, guarantor, obligor, or standby creditor arising out of any loan instrument; (6) directly or indirectly charge or receive any bonus, fee, commission, or other payment or benefit in connection with the making and servicing of any loan, except as authorized under this Part; (7) increase the amount of any prior lien on property securing the 503 loan; (8) require or obtain any funds, certificates of deposit, compensating balance not under the unrestricted control of the small concern, or any other agreement establishing any preference in favor of the 503 company. "Preference" as used herein, shall include but shall not be limited to any arrangement whereby the 503 company obtains a position superior to the position of SBA in the repayment of its injection pursuant to § 108.503–10.

(d) *Servicing fee.* The 503 company's monthly service fee (§ 108.503–6) may be accrued without interest but not collected by the 503 company in the event: (1) The small business concern's monthly payment is not made in a timely manner (within 30 days of due date); (2) the Reserve Account contains less than two full monthly payments; (3) other default by the small concern receiving assistance; or (4) of failure by the 503 company to comply with the reporting and servicing requirements contained in this Part. If the 503 company does not comply with the reporting and servicing requirement within 90 days from their respective due dates, such fees shall be paid to SBA.

(e) *Servicing deficiencies.* SBA shall provide written notice to the 503 company of any sevicing or collection deficiencies. Such notice shall state the deficiencies and action to be taken that will correct such deficiencies. Should the 503 company fail to take such action, expenses and administrative costs incurred by SBA to correct such deficiencies may be assessed to and must be paid by the 503 company computed on a daily basis, not to exceed $250 per day, *Provided, however,* That this amount shall be reduced by the amounts paid to SBA pursuant to subsection (d)(4) above.

(f) *Termination of fees.* If the 503 company persists in its failure to take corrective action pursuant to paragraph (e) of this section, SBA shall have the right, pending suspension or revocation pursuant to § 108.503–15(d), to take over servicing of all or part of the 503 company's portfolio or require the 503 company to assign all or part of its portfolio to another 503 company. In such event, the assignor 503 company shall have no rights to any further fees which shall be paid to the transferee. If SBA does the servicing it shall collect the fees. In addition, the 503 company's processing authority will be temporarily suspended.

(g) *Assumption of a 503 loan.* A 503 loan may not be assumed by another small concern without SBA's prior written approval. Such approval shall not be unreasonably withheld.

(h) *Deferments.* The SBA may allow a deferment of monthly payment(s) under the following conditions:

(1) All lenders to the project [see § 108.503–4(a)] shall agree to defer payments due them on their financing.

(2) In the event the SBA advances funds for semi-annual debenture payment(s), the small concern shall remain liable for all unpaid principal and interest. The portion of SBA's advance consisting of SBA's payment of interest on the debenture shall be added to the principal balance of the Note.

(Reporting and recordkeeping requirements have been approved by the OMB under control number 3245–0192)

§ 108.503–14 Liquidation of 503 loans and security.

When and as authorized by SBA, a 503 company shall participate in activities relating to foreclosure and liquidation of assets securing 503 loans.

§ 108.503–15 Oversight and evaluation; suspension and revocation.

(a) *Compliance audit.* Each 503 company shall be subject to periodic compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General. The 503 company shall make all books and records and other pertinent materials available for review and copying for purposes of the conduct of the audit.

(b) *Fees.* Except for the first audit, the 503 company shall be assessed for each audit based on an hourly rate prescribed by the SBA's Inspector General but not to exceed $35. SBA may waive the audit fee where the 503 company has less than $10 million in outstanding balances in 503 debentures or where such 503 company's operations have been suspended or are in receivership, or where a 503 company is audited more frequently than every three years.

(c) *Operational review.* Each 503 company shall be subject to an operational review by SBA. 503 companies with a portfolio of 5 or more loans shall be subject to at least an annual review. The 503 company shall cooperate with SBA by making its staff, records, and facilities available at the Agency's request.

(d) *Suspension and revocation of eligibility*—(1) *Violations.* SBA reserves the right to revoke the eligibility of any 503 company from participation in the program, or to immediately suspend temporarily the eligibility of any 503 company, in the case of a violation of law, SBA regulations including but not limited to the good character requirement of § 108.4(c), terms of a debenture or any agreement with SBA: *Provided, however,* That such revocation or suspension shall not invalidate any guarantee previously issued by SBA. Suspension and revocation proceedings for such purpose shall be conducted in accordance with the provisions of Part 134 of this Chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.033.

(Reporting and recordkeeping requirements have been approved by the OMB under control number 3245–0192)

(Catalog of Federal Domestic Assistance Program Nos. 59.013 State and Local Development Company Loans and 59.036 Certified Development Company Loans)

Dated: March 20, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–15680 Filed 7–3–85; 8:45 am]

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Friday
July 5, 1985

Part VI

Department of Justice

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Haitian Entrants From Designated Urban Areas of South Florida

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Haitian Entrants From Designated Urban Areas of South Florida

AGENCY: Community Relations Service (CRS), Justice.

ACTION: Notice of Availability of funding for grants to assist interested Haitian Entrants in Designated Urban Regions (DUR) of South Florida to resettle to favorable communities outside the State of Florida.

SUMMARY: This announcement governs the award of grants to public or private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies, to provide eligible Haitian Entrants currently residing in Designated Urban Regions of South Florida with an opportunity to relocate in a planned way, to communities outside the State of Florida which offer more favorable and long-term employment opportunities.

Planned Secondary Resettlement (PSR) differs from "secondary migration" in that PSR involves a considered assessment of the resettlement area prior to relocation, identification of employment opportunities in the areas of resettlement, delivery of comprehensive supportive services, and a coordinated transition from the area of recruitment to the area of resettlement with notification of appropriate government authorities and other pertinent organizations or entities.

DATE: Closing Date: 5:00 p.m., Eastern daylight time; August 20, 1985.

Proposals will be evaluated by an independent grant review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Director, Community Relations Service. Grants will be awarded subuject to the availability of funds.

Authorization: Authority for this activity is contained in Title V, Section 501(c) of the Refugee Education Assistance Act of 1980 (P.L. 96–422).

Available funds: Approximately $450,000 will be available for this grant program in Fiscal Year 1985. The Director estimated that these funds could support up to two grant awards at an average cost of $225,000 each. The anticipated range of financial support for these grants is $150,000 to $300,000 depending upon the distance between sending and receiving sites, the size of the populations to be resettled, the number of sending sites and receiving sites to be involved. These anticipated ranges are intended to serve as benchmarks only. These estimates do not bind the Community Relations Service to any specific number of grants or to any specific level of funding.

Future fiscal year funding for this grants program will be contingent upon Federal appropriations. If adequate funds are available, the Director, CRS, anticipates continuation of this program.

Awards normally will not exceed a 24 month program performance period for recruitment, resettlement, and ongoing services.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, are eligible to apply for funds under this PSR program.

For-profit organizations, incorporated under State law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, and which can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been requested, are also eligible to apply.

If an Entrant group or an organization representing Entrants interested in relocating to a favorable site wishes to participate in PSR, they are encouraged to establish linkages with an established non-profit or profit organization or agency which would act as the primary applicant.

Any combination of eligible organizations may join together to submit an application so long as one organization is clearly identified as the responsible applicant.

The geographical location of the applicant is not restricted to its selected areas of recruitment or resettlement; however, the applicant must be able to show that its network of local affiliates or its subcontractor(s) or subgrantee(s) will be able to effectively deliver services.

Eligible Client Population

Under the terms of this announcement, the eligible client population will consist of Haitians who:

1. Have not had a prior secondary resettlement opportunity.

2. Live or work within DUR I or II.

3. Fall within one of the following categories:

a. Domestic units comprised of two or more eligible, employable adults with dependent children.

b. Domestic units comprised of a single, eligible, employable adult with dependent children.

c. Single, eligible, employable adults without dependent children.

4. Meet the definition of Cuban/Haitian Entrant as defined below:

Definition of Cuban/Haitian Entrant

(A) A Cuban/Haitian Entrant is defined by Title V, Section 501(e) (P.L. 96–422) as:

(1) Any individual granted parole status as a Cuban-Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti—

(A) who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with Immigration and Naturalization Service; and

(B) With respect to whom a final, nonappealable, and legally enforceable order of exclusion or deportation has not been entered.

Adult Haitians who do not meet the definition of Cuban/Haitian Entrant as defined above cannot be considered for participation in this program.

Other eligible adults who meet all the above criteria except for employability and are members of a domestic unit will be considered for participation in this program at the discretion of the Community Relations Service.

Priority will be given to the resettlement of domestic units with dependent children, especially domestic units in which all family members are Entrants. This assistance program will focus resources on the resettlement of eligible employable adults and their dependents.

Information used to determine the legal status and program eligibility of potential candidates for resettlement under PSR will be treated as confidential.

Recruitment Areas: Designated Urban Regions

Applicants may submit one application which addresses the recruitment, resettlement processes and program services for Entrants from one

or both of the designated geographical areas outlined below.

A maximum of three recruitment sites or areas may be selected within each Designated Urban Region (DUR) as outlined below, and a total of two resettlement sites may be chosen for relocation.

DUR I is defined as the geographic territory of Dade and Broward counties which includes and lies north of metropolitan Miami as far as and including Fort Lauderdale, and which lies east of the Florida Turnpike. Homestead and Florida City are *not* included in this geographic area as they are considered to be rural migrant areas.

DUR II includes the geographic territory of Broward, Palm Beach, Martin and St. Lucie counties which lies north of Fort Lauderdale and east of the Florida Turnpike, as far as and including Fort Pierce. Belleglade and Indiantown are *not* included in this geographic area as they are considered to be rural migrant areas.

An applicant may submit an application for Entrant recruitment within:

1. *DUR I*—with a maximum of three recruitment areas within DUR I and a maximum of two resettlement sites outside the State of Florida.

2. *DUR II*—with a maximum of three recruitment areas within DUR II and a maximum of two resettlement sites outside the State of Florida.

3. *BOTH DUR I AND DUR II*—with a maximum of six (6) recruitment sites (a maximum of three in each DUR) and a maximum of two resettlement sites outside the State of Florida.

Applicants must specify for which DUR they are submitting an application. If the applicant wishes to submit an application for recruitment and resettlement covering both DURs, only one proposal need be submitted.

If an applicant chooses to submit an application for recruitment from both DUR I and II, the applicant must submit separate, detailed recruitment and resettlement plans, following the programmatic guidelines outlined below, for each DUR and for each resettlement site.

A minimum of 25 eligible clients and a maximum of 50 eligible clients may be resettled in each resettlement site, if two resettlement sites are chosen. If only one resettlement site is selected, a minimum of 25 and a maximum of 75 eligible clients may be resettled in this single site.

It is expected that applicants will design their programs realistically so that the scope of recruitment and resettlement does not exceed the organizational capacity of the primary applicant and its subcontractor(s)/subgrantee(s) or local affiliates to perform the required services.

Awards for this grant program will be competitive for the recruitment within and resettlement from the DURs. Resettlement sites may receive clients from either DUR, if an applicant is awarded both DURs.

Supplementary Information

Purpose and Scope

The purpose of this announcement is to provide an opportunity for Haitian Entrants residing within designated urban regions of South Florida who have been unable to find full-tme, permanent employment to relocate to other areas of the United States that offer favorable prospects for employment. Clients are eligible for services for one year from the date they are selected for the program.

Planned Secondary Resettlement serves two major objectives:

1. To increase financial self-sufficiency among Haitian Entrants.

2. To ease the burden upon areas heavily impacted by Entrant populations while increasing the use of under-utilized communities.

Services provided under these grants will have the specific goals of assisting Entrants to attain self-sufficiency through a resettlement experience that focuses upon permanent employment and social adaptation to the site where Entrants are resettled. Each client will receive services for a period of one year from the date of selection for the program.

Characteristics of Resettlement Sites

It is expected that resettlement sites proposed for PSR will have demonstrably favorable economic and social conditions for Entrant resettlement. In general, the following conditions are required to be present in the proposed resettlement site:

- The availability of full-time permanent employment at skills levels appropriate to PSR clients.
- Safe and sanitary housing which is available and affordable to the Entrant.
- The capacity to provide needed services such as job placement, English language training opportunities and other social services on a timely and appropriate basis.
- An expanding job market in skill areas in which PSR clients would be qualified or could be trained.
- A minimum of racial discrimination or community tension likely to have an adverse effect upon Entrants.
- Available low-cost health care services.

The existence of a stable community of the same ethnicity as the Entrants or similar socio-cultural background is highly desirable, but not mandatory.

Resettlement supported by PSR grants must be directed to assisting Entrants to relocate to communities which provide significantly better opportunities for full-time, permanent employment of eligible adults than exist in their current communities of residence or work. No grants will be awarded to support resettlement in areas where the job market is insufficient to accommodate the relocated Entrants or where the unemployment rate is significantly above the national average.

CRS will not entertain proposals which include resettlement into states or areas impacted by Entrants unless the applicant can guarantee permanent, full-time employment and service delivery in such areas. Resettlement within the State of Florida is not permissible under this Notice.

Proposals designating other areas experiencing Entrant impact such as New York, New Jersey and California will be carefully evaluated as to their appropriateness as PSR sites.

Characteristics of Recruitment Areas

Recruitment areas must lie within the Designated Urban Regions, as previously outlined above. The term "area" rather than "site" is used as recruitment may either occur within the vicinity of a particular community or within a radius of the applicant's or subcontractor(s)'/subgrantee(s)' administrative office.

It is expected that applicants will provide a rationale for the selection of recruitment area(s) based upon:

1. The assessed needs of the Haitian Entrants in the area in terms of: (a) Available employment, (b) affordable housing, and (c) available social services.

2. The size and composition of Haitian populations in these areas.

3. The ability of the applicant to recruit effectively from these areas.

Application Contents

Program Design

The application should set forth in detail the following:

1. Organization/Agency Capability: An overview of the applicant agency, agency qualifications, and agency history including agency philosophy, goals, and history of experience with respect to the resettlement of and/or delivery of services to Entrants or similar populations. (A brief program

description and the number of clients served should be included.)

Identification of the organization(s)/agency(ies) proposed for participation in the PSR project in the recruitment areas within the DUR(s) and at the resettlement site(s); a description of their qualifications in relation to responsibilities; and the mechanism for coordination among these agencies.

2. Target Population: A description of the proposed resettlement population in terms of the criteria for acceptance into the program, the number of clients to be resettled at each resettlement site, and estimates of numbers expected to be recruited within the DUR(s).

3. Identification of Site(s): Identification of DUR(s); recruitment areas/sites within DUR(s) and the resettlement sites.

4. Management Plan: A plan which: (a) identifies the agency/organization which will have overall fiscal and program responsibility, (b) identifies the organizational structure and lines of authority, (c) describes the overall proposed staffing plan and staff qualifications for the entire project, and (d) includes a comprehensive plan for coordination of activities between the recruitment and resettlement components.

5. Program Phases: A narrative description of proposed program phases (recruitment, initial resettlement, and ongoing resettlement services), including a time-line (in months) or flow chart with milestones from start-up to termination, and a plan for the phased resettlement of Entrants into the resettlement community.

Recruitment Areas/Sites—Requirements and Program Services

The application should set forth in detail for each recruitment area/site:

1. The identification of the agency responsible for recruitment at each area/site, agency staffing patterns and agency qualifications.

2. A description of the characteristics of the selected recruitment areas/sites within the DUR and the basis for the selection.

3. A description of linkages with applicant organization and with agency(ies) responsible for resettlement site operations. A plan for the coordination of the delivery of services and continuity of services between the recruitment area and resettlement site(s).

4. A description of strategies for:

a. Client outreach.

b. Client recruitment.

c. Client selection.

d. Client retention in the area of recruitment.

5. A description of the criteria for selection based upon such criteria as:

a. Prior employment history.

b. Personal motivation.

c. Need.

d. English language ability.

e. Health.

f. Education.

6. A description of recruitment processing and intake procedures.

7. The proposed time table for the resettlement of Entrants upon acceptance into the program.

8. A description of the client case record.

9. A description of health screening activities for Entrants accepted into the program, including a plan for the treatment of any minor illnesses prior to resettlement.

10. A description of how the recruitment agency and resettlement agency will jointly develop individualized service plans which will set forth the services to be delivered at the site of resettlement.

11. A description of the process to provide orientation to clients about the resettlement site(s) and the available services at the resettlement site(s).

12. A plan for transporting clients from the recruitment area(s) to the resettlement site(s).

13. A plan for initial reception at the site(s) of resettlement.

Resettlement Site Program Design and Services

For each resettlement site, the application must set forth in detail the following:

1. Identification of the agency/organization responsible for resettlement; this agency's staffing patterns and its qualifications.

2. A detailed qualitative and quantitative assessment of the proposed resettlement community(ies) with particular regard to:

(a) Availability of immediate or imminent prospects for full-time permanent employment consistent with the skill levels of the participants.

(b) Current level of employment and unemployment in various job markets.

(c) Location of housing which is safe, sanitary, available and affordable to the Entrants.

(d) Availability of affordable health and mental health care services.

(e) Availability of supportive social services for the target population, including daycare.

(f) Availability of community:

1. Employment services.

2. English language training services.

3. Vocational training services.

4. Vocational English language training services.

(g) A description of the community, its racial, ethnic and sociocultural composition, including a description of existing refugee populations.

(h) Availability of educational services for dependent children.

(i) A discussion of the level of community receptivity regarding the Entrants to be resettled.

(j) A discussion of the presence or absence of an established Haitian population and/or established Haitian assistance association(s).

3. *Core Services*—these services will enable participating Entrants to meet basic transportation, food and shelter expenses during the initial resettlement period (usually 30 days and under extraordinary circumstances up to 60 days). The following core services are required to be provided to the client either in the form of a resettlement allowance or by direct payment of expenses by the resettlement agency:

(a) Reasonable transportation and moving costs from the site of recruitment to the site of resettlement.

(b) Living expenses during the initial resettlement period of time, including food, shelter, utilities and local transportation costs.

(c) One-time security deposits for housing and utilities.

(d) Essential furnishings/utensils.

(e) Stipends (in the absence of immediate employment income).

4. On-going Resettlement Services (provided during and after initial resettlement)—The applicant is required to set forth a detailed plan for the organization, delivery and coordination of services including:

(a) *Employment*—a plan for the development of employment resources prior to the arrival of clients; the job development, placement, upgrading services and job counseling activities.

(b) *On-the-Job Training*—a plan for developing options for on-the-job training, including subsidization of up to ½ of an Entrant's salary during a training period of up to 90 days, to an employer who guarantees job placement at the end of the training period.

(c) *Vocational Education*—fund for employed Entrants who wish to upgrade skills for employment mobility (this fund should not be used in lieu of employment).

(d) *English Language Training*—with an emphasis upon survival and vocational English Language Training.

(e) Orientation to the resettlement site and the community resources which are available to the clients.

(f) Individual and group counseling (costs associated with client legal

services are not allowable expenditures under this Notice).

(g) A plan to provide access to affordable health care services for up to one year, or until the Entrant has obtained medical coverage through his/her employer.

(h) Day care services for children that enables eligible employable adults to obtain and sustain employment.

(i) *Emergency assistance*—provision for one month's rent, food, transportation, utility payments etc., in cases of dire need.

(j) Crisis intervention services.

5. A description of the plan for tracking and monitoring client progress on a regular basis.

6. Development of a case record system which will include all significant decisions and events relating to the client, and, at a minimum includes the following information:

(a) Identifying data including family composition.

(b) Initial screening and intake forms.

(c) Case management plan developed in conjunction with agency responsible for recruitment.

(d) Case history/social history.

(e) Medical services, if available.

(f) Individual counseling plans.

(g) Program/case notes and incident reports.

(h) Evaluation and progress reports.

(i) Current employment data/information.

(j) Summary of program and client responsibilities signed by the Entrant.

(k) Copy of Form I-94.

(l) Referrals to other agencies.

(m) Final case report.

7. Identification of measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

8. Identification of voluntary and donated resources, including letters of intent from the agency or entity providing the resource.

9. Description of the local social service network.

10. A plan for program evaluation including identification of the evaluative criteria.

Administrative Requirements

Applicants are required to submit the following material as an addendum to the program proposal:

1. Agency Administration and Organization

(a) Agency organizational chart describing the agency as a whole and the organizational relationship of the proposed resettlement program to other agency programs.

(b) Comprehensive organizational chart of the proposed resettlement and recruitment components and their relationship.

(c) Copies of articles of incorporation.

(d) IRS status as a non-profit agency, if applicable.

(e) List of officers and board members, if applicable.

(f) List of professional affiliations and certifications.

2. Organizational Standards/Policies and Policies Regarding Clients

(a) Personnel handbook and standards of conduct.

(b) Statement regarding professional and agency liability.

(c) Copy of program rules/regulations.

(d) Copy of policy regarding the confidentiality of client information and records.

(e) Discussion of the method to be used to inform clients of program rules, regulations and policies, including the confidentiality of client information.

3. Staff

(a) Job/position descriptions and resumes (if individuals have been identified for certain positions) for all personnel to be hired for both the recruitment and resettlement components, including documented evidence of the availability of bi-lingual and/or bi-cultural personnel; (b) Resumes and qualifications of program consultants must also be included.

4. Community Support at Resettlement Sites

(a) Letters of program support from local political representatives, social service agencies, merchants, potential employers, etc. Letters should reflect writers, awareness of program's intent, potential federal funding source and location of project. Letters should also contain a recommendation or comment regarding the proposed resettlement program.

(b) Verification that the applicant has notified the applicable State Refugee Coordinator of the organization's intent to submit a proposal.

(c) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided.

Finance and Budget

Applicants are required to submit the following materials as an addendum to the proposal:

1. A copy of the latest financial audit of the applicant.

2. A description of the Financial Management System of the applicant.

3. A listing of other Federal, State, local or foundation grants or contracts, etc., being administered by the applicant. This material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant/contract performance period, and name, address and telephone number of grant and/or contracts officer (Federal, State or local).

4. Subgrants and/or Subcontracts.

(a) Identify all proposed services which are to be subgranted/subcontracted.

(b) Provide relevant background material regarding the proposed subgrantee/subcontractor.

(c) Provide letters from the proposed subgrantee(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

Budget

The proposed budget will be examined by the Grants Officer to verify the costs data, to evaluate specific elements of costs and to determine if costs are necessary, reasonable and allowable under applicable statutes and regulations. The following budget structure should be used to provide appropriate costs breakdowns. Detailed costs justification should also be attached to the budget for each budget category:

Personnel

Show salaries and wages only. Fees and expenses for consultants should be included in line "other". The name and title, salary amounts and level of effort must be identified for each position. A current vitae is required for each position.

Fringe Benefits

Submit a current copy of the negotiated fringe benefit rate. If fringe benefits are applicable to direct salaries and wages and treated as part of the indirect cost rate negotiation agreement, leave blank.

Travel

Use only for travel (domestic) of employees on the grant. Include estimated cost breakout for airfare, per diem, number of days, number of persons traveling and purpose of travel. Travel for consultants should not go in this line, nor should local transportation (i.e., where no out-of-town trip is involved).

Equipment

Use only for non-expendable personnel property, which is defined as follows:

Non-expendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property. Personal property means property of any kind except real property.

Each item of non-expendable personal property costing $1,000 and each item of general purpose equipment costing over $500 must be identified and explained (i.e., office equipment and furnishings which are usable for activities other than the technical, specialized aspects of the grant program).

Supplies

Include all tangible personal property except that which is included in the equipment line. Requests in excess of $500 per category of tangible personal property (supply) must be identified and explained.

Contractual

Use for procurement contracts (except those which belong on other line items such as equipment, supplies, and construction). It must not include payments to individuals such as stipends, consulting fees, benefits etc.

Renovation

Costs for alteration and renovation must be explained in detail.

Entrant Cost

All costs directly related to entrants such as stipends, and allowances, temporary housing, essentials, furnishings and utensils, food or food allowances, personal items, clothing, local transportation, assistance payments, medical services, etc., must be identified and explained.

Other

All direct costs not clearly covered in categories listed above i.e., consulting costs, local transportation, space and equipment rental, and van usage must be identified and explained. Request for any item identified in the Office of Management and Budget Circular (OMB A-122) which require approval by the CRS Grants Officer must be identified and explained. Costs for space rental should be identified by square feet. Also identify utilities and breakout costs per month.

Indirect Cost

Identify and explain indirect cost items.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Grant Review Panel. An application may be rejected if:

1. The application omits:

a. Detailed assessments of the proposed resettlement community(ies).

b. The rationale for the selection of recruitment areas within the DURs.

c. A comprehensive management plan, including a plan for the coordination of activities between the recruitment and resettlement components.

d. Documented written evidence of community support for the resettlement program.

e. Comprehensive information regarding subcontractor(s) and/or subgrantees.

f. Job/position descriptions for all personnel to be hired for both the recruitment and resettlement components of the program.

g. Organizational charts describing the agency as a whole and organizational charts of the proposed recruitment and resettlement components.

h. A comprehensive line-item budget with appropriate descriptive narrative.

i. A copy of the latest financial audit of the applicant.

2. The application is from an ineligible applicant.

3. The application is received after the closing date.

Criteria for Evaluating Applications

Grant applications will be evaluated according to the following criteria:

1. The quality of the proposal's project management and staffing plans as demonstrated by:

- The adequacy of the plan for program management and the plan for coordination between the recruitment and resettlement components of the program.
- The adequacy of the qualifications of organizations participating in the project in relation to proposed rules, and the extent to which these organizations have demonstrated track records as providers of services to Haitian Entrants or similar populations.
- The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.
- The extent to which subgrantee(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.
- The adequacy of the plans for staff supervision of each agency/organization participating in the project.
- The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibility of the staff in the project, and the education and relevant experience required for the position.
- Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and progress of the program. (20 points)

2. The extent to which the qualitative and quantitive assessment of the resettlement site(s) provides justification for their selection as demonstrated by:

- The availability of full-time permanent employment opportunities at skills levels appropriate to Haitian PSR clients.
- The level of employment and unemployment in various job markets.
- The availability of housing which is safe, sanitary and affordable to the client.
- The availability of affordable health care services.
- The capacity of the community to provide: (1) employment services, (2) English language training, (3) vocational training, (4) educational and social services (including daycare) on a timely and appropriate basis. (15 points)

3. *Program Services*—The applicant's response to the required program services, including a description of program resources which demonstrates:

- The capacity of the program to offer services which meet the needs of the clients.
- Utilization of resources in a manner which promotes and fosters cultural identification and mutual support.
- The capacity to provide and sustain full-time permanent employment.
- Sensitivity to the issues of culture, race, ethnicity and native language.
- Preparation for and achievement of personal and financial independence for Entrants in an expeditious and effective manner. (15 points)

4. The degree to which the applicant has provided written documented evidence of community support and acceptance of the program at the site(s) of resettlement. (10 points)

5. The extent to which the assessment of the recruitment site(s)/area(s) provides justification for their selection as demonstrated by:

- The assessed needs of the Haitian Entrants in the site(s)/area(s) of recruitment in terms of: (1) available

employment; (2) affordable, safe and sanitary housing; (3) available social services.

• The size and composition of the Haitian population in the proposed recruitment site(s)/area(s).

• The ability of the applicant to effectively recruit clients from the proposed recruitment site(s)/area(s). (12 points)

6. The adequacy of client recruitment, client outreach and client retention strategies. (10 points)

7. The adequacy of the applicant's response regarding the requirements and program services for each recruitment area/site as demosntrated by:

• The agency staffing plan and staff qualifications.

• The description of linkages with the applicant organization and with the agency(ies) responsible for resettlement site operations.

• The adequacy of the proposed services.

• The adequacy of the methodology for the identification and selection of program participants.

• The description of the plan to provide health screening services to program participants.

• The description of:

a. Processing and intake procedures.

b. Orientation activities.

c. The plan for transporting clients to the site(s) of resettlement.

• The adequacy of the plan for developing individual client service/case plans. (10 points)

8. The reasonableness of the proposed budget and budget narrative, for both the recruitment and resettlement components, in relation to the proposed program activities. (5 points)

9. The plan for project evaluation, including the methodology and criteria for evaluating the program. (3 points)

Application Request and Submission

Eligible applicants may request grant applications from the Community Relations Service (CRS), Department of Justice (DOJ), Grants Management Office, Room 370; 5550 Friendship Boulevard; Chevy Chase, Maryland 20815; Attention Cynthia Bowie, (301) 492–5810. For program related information, contact either Kenneth Leutbecker, (301) 492–5809 or 1–800 424–9304 or Jay LaRoche, (305) 350–4261.

Applicants must submit a signed original and two (2) copies of the proposal to the Attention of Cynthia Bowie, Grants Management Office, Community Relations Service.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of one of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping lable, invoice or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with the local post office.

Applicants are encouraged to use registered or at least first class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before August 20, 1985 shall be considered timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Justice, Community Relations Service, Room 370, 5550 Friendship Boulevard; Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand-delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Applicable Regulations

The following codes and regulations apply to grants awarded through this notice:

Title 41—Code of Federal Regulations
Title 28—Code of Federal Regulations
Part 42, Subpart C—Non-discrimination in Federally assisted programs, Title VI of the Civil Rights Act of 1964
Part 42, Subpart D—Non-discrimination in Federally assisted programs-implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979
Part 42, Subpart G—Non-discrimination based on handicap in Federally assisted programs
Part 42, Subpart H—Procedures for complaints of employment discrimination filed against recipients of Federal financial assistance.
Office of Management and Budget (OMB) Circular A–110
Office of Management and Budget (OMB) Circular A–122

Records and Reports

CRS Grantees are required to maintain all Entrant records, program and financial information and/or data for a three (3) year period after the end date of the program performance period.

At the conclusion of the three (3) year retention period, CRS will instruct the grantee regarding the final disposition of Entrant records, program and financial information and/or other data.

Grantees shall, within thirty (30) days following the end of each calendar quarter, furnish to the Senior Grants Management Specialist, CRS, an original and two copies of both the Financial Status Report (SF 269) and the Federal Cash Transaction Report (SF 272).

Within ninety (90) days of the end date of the project performance and budget periods, Grantees are required to submit to the Senior Grants Management Specialist, CRS, an original and two copies of a final Financial Status Report (SF 269).

Grantees shall, within thirty (30) days following the end of each calendar quarter, provide the designated CRS Program Officer with a quarterly program progress report.

Gilbert G. Pompa,

Director, Community Relations Service.

July 1, 1985.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all states have the option of designing procedures for review and comment on Federally assisted programs. Each applicant is required to notify each state in which it is proposing activities under Planned Secondary Resettlement Program and to comply with the state(s) established review procedures. This may be done by contacting the applicable state Single Point of Contract (SPOC). Following is a list of SPOCs:

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3485 Norman Bridge Road, P.O. Box 2939, Montgomery, Alabama 38105–0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the state's E.O. 12372 process should be directed to:

Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse Division of Local Government, 1313 Sherman Street, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning the State's E.O. 12372 should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For information contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 532 East 12th Street, Des Moines, Iowa 50139, Tel. (515) 281–3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727–7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373–0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Building, Rm. 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296–3698

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202

For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, C/O Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420.

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN, 806, 363 West State Street, Trenton, New Jersey 06625–0803, Tel. (609) 292–6613

Note.—Correspondence and questions concerning the State's E.O. process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Management and Contracts Review Division, Department of Finance and Administration, State of New Mexico,

515 Don Gaspar, Santa Fe, New Mexico 67503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215
For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108, Attn: Charles Griffiths, Executive Director, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2658

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pandleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (815) 741–1678

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhn, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street, CEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266–8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, DM 96950.

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 60 days after the date of publication, addressed to:

Richard Gutierrez, Coordinator, Immigration and Refuge Affairs, Community Relations Service, 5550 Friendship Blvd., Suite 330, Chevy Chase, MD 20815

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federal register

Friday
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Part VII

Department of Justice

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Haitian Entrants From the Designated Migrant Region of South Florida

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Haitian Entrants From the Designated Migrant Region of South Florida

AGENCY: Community Relations Service (CRS), Justice.

ACTION: Notice of Availability of funding for grants to assist interested Haitian Entrants from the Designated Migrant Region (DMR) of South Florida to resettle to favorable communities outside the State of Florida.

SUMMARY: This announcement governs the award of grants to public or private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies, to provide eligible Haitian Entrants currently residing in the Designated Migrant Region (DMR) of South Florida with an opportunity to relocate in a planned way, to communities outside the State of Florida which offer more favorable and long-term employment opportunities.

Planned Secondary Resettlement (PSR) differs from "secondary migration" in that PSR involves a considered assessment of the resettlement area prior to relocation, identification of employment opportunities in the areas of resettlement, and a coordinated transition from the area of recruitment to the area of resettlement with notification of appropriate government authorities and other pertinent organizations or entries.

DATE: Closing Date: 5:00 p.m., Eastern Daylight Time; August 20, 1985.

Proposals will be evaluated by an independent grant review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Director, Community Relations Service. Grants will be awarded subject to the availability of funds.

Authorization: Authority for this activity is contained in Title V, Section 501(c) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422).

Available funds: Approximately $450,000 will be available for this grant program in Fiscal Year 1985. The Director estimates that these funds could support up to two grant awards at an average cost of $225,000 each. The anticipated range of financial support for these grants is $150,000 to $300,000 depending upon the distance between sending and receiving sites, the size of the populations to be resettled, the number of sending sites and receiving sites to be involved. These anticipated ranges are intended to serve as benchmarks only. These estimates do not bind the Community Relations Service to any specific number of grants or to any specific level of funding. Future fiscal year funding for this grant program will be contingent upon Federal appropriations. If adequate funds are available, the Director, CRS, anticipates continuation of this program.

Awards normally will not exceed a 24 month program performance period for recruitment, resettlement, and on-going services.

Eligible Applicants

Non-profit organizations incorporated under state law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, are eligible to apply for funds under this PSR program.

For-profit organizations, incorporated under state law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, and which can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been requested, are also eligible to apply.

If an Entrant group or an organization representing Entrants interested in relocating to a favorable site wishes to participate in PSR, it is encouraged to establish linkages with an established non-profit or for profit organization or agency which would act as the primary applicant.

Any combination of eligible organizations may join together to submit an application so long as one organization is clearly identified as the responsible applicant.

The geographical location of the applicant is not restricted to its selected areas of recruitment or resettlement; however, the applicant must be able to show that its network of local affiliates or its subcontractor(s) or subgrantee(s) will be able to effectively deliver services

Eligible Client Population

Under the terms of this announcement, the eligible client population will consist of Haitians who:

1. Have not had a prior secondary resettlement opportunity.

2. Live or work within the DMR.

3. Fall within one of the following categories:

a. Domestic units comprised of two or more eligible, employable adults with dependent children.

b. Domestic units comprised of a single, eligible, employable adult with dependent children.

c. Single, eligible, employable adults without dependent children.

4. Meet the definition of Cuban/Haitian Entrant as defined below.

Definition of Cuban/Haitian Entrant

(A) A Cuban/Haitian Entrant is defined by Title V, section 501(e) (Pub. L. 96–422) as:

(1) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti—

(A) who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with Immigration and Naturalization Service; and

(B) With respect to whom a final, nonappealable, and legally enforceable order of exclusion or deportation has not been entered.

Adult Haitians who do not meet the definition of Cuban/Haitian Entrant, as defined above, cannot be considered for participation in this program.

Other eligible adults who meet all the above criteria except for employability and who are members of a domestic unit will be considered for participation in this program at the discretion of the Community Relations Service.

Priority will be given to the resettlement of domestic units with dependent children, especially domestic units in which all family members are Entrants. This assistance program will focus resources on the resettlement of eligible employable adults and their dependents.

Information used to determine the legal status and program eligibility of all potential candidates for resettlement under PSR will be treated as confidential.

Recruitment Area: Designated Migrant Region

Applicants may submit one application which addresses the recruitment, resettlement processes and program services for Entrants living or

working within the Designated Migrant Region.

A maximum of three recruitment sites or areas may be selected within the DMR as outlined below, and a total of two resettlement sites may be chosen for relocation.

For the purpose of this Announcement, the Designated Migrant Region is defined as:

The migrant labor areas of South Florida including and lying north of Florida City and Homestead, and west of the Florida Turnpike and south of the city of Orlando. It is expected that major sites/areas of recruitment would be the communities of Immokolee, Belleglade, Indiantown, Homestead, Florida City and other communities with concentrated populations of Haitian migrant workers.

Applicants must specify the areas/sites of recruitment and include detailed recruitment plans for the targeted areas/sites. Applicants must also specify the areas/sites of resettlement and must include detailed resettlement plans for the targeted areas/sites.

A minimum of 25 eligible clients maybe resettled in each resettlement site, for a total of 50, if two resettlement sites are chosen. A maximum of 50 eligible clients may be resettled if a single site is selected.

It is expected that applicants will design their programs realistically so that the scope of recruitment and resettlement does not exceed the organizational capacity of the primary applicant and its subcontractor(s) or subgrantee(s) or local affiliates to perform the required services.

Awards for this grant program will be competitive.

Supplementary Information

Purpose and Scope

The purpose of this announcement is to provide an opportunity for Haitian Entrants residing within the Designated Migrant Region of South Florida who have been unable to find full-time, permanent employment to relocate to other areas of the United States that offer favorable prospects for employment.

Clients are eligible for services for one year from the date they are selected for the program.

Planned Secondary Resttlement serves two major objectives:

1. To increase financial self-sufficiency among Haitian Entrants.

2. To ease the burden upon areas heavily impacted by Entrant populations while increasing the use of under-utilized communities.

Services provided under these grants will have the specific goals of assisting Entrants to attain self-sufficiency through a resettlement experience that focuses upon permanent employment and social adaptation to the site where Entrants are settled. Each client will receive services for a period of one year from the date of selection for the program.

Characteristics of Resettlement Sites

It is expected that resettlement sites proposed for PSR will have demonstrably favorable economic and social conditions for Entrant resettlement. In general, the following conditions are required to be present in the proposed resettlement site:

- The availability of full-time permanent employment at skills levels appropriate to PSR clients.
- Safe and sanitary housing which is available and affordable to the Entrants.
- The capacity to provide needed services such as job placement, English language training opportunities and other social services on a timely and appropriate basis.
- An expanding job market in skill areas in which PSR clients would be qualified or could be trained.
- A minimum of racial discrimination or community tension likely to have an adverse effect upon Entrants.
- Available low-cost health care services.

The existence of a stable community of the same ethnicity as the Entrants or similar socio-cultural background is highly desirable, but not mandatory.

Resettlement supported by PSR grants must be directed to assisting Entrants to relocate to communities which provide significantly better opportunities for full-time permanent employment of eligible adults than exist in their current communities or residence or work. No grants will be awarded to support resettlement in areas where the job market is insufficient to accommodate the relocated Entrants or where the unemployment rate is significantly above the national average.

CRS will not entertain proposals which include resettlement into states or areas impacted by Entrants unless the applicant can guarantee permanent full-time employment and service delivery in such areas. Resettlement within the State of Florida is not permissible under this Notice.

Proposals designating other areas experiencing Entrant impact such as New York, New Jersey and California will be carefully evaluated as to their appropriateness as PSR sites.

Characteristics of Recruitment Areas

Recruitment areas must lie within the Designated Migrant Region, as outlined above. The term "area" rather than "site" is used, as recruitment may either occur within the vicinity of a particular community or within a radius of the applicants' or subgrantee(s)'/subcontractor(s)' administrative office.

It is expected that applicants will provide a rationale for the selection of recruitment area(s) based upon:

1. The assessed needs of the Haitian Entrants in the area in terms of: (a) available employment, (b) safe, sanitary and affordable housing and, (c) available social services.

2. The size and composition of Haitian populations in these areas.

3. The ability of the applicant to recruit effectively from these areas.

Application Content

Program Design

The application should set forth the following:

1. Organization/Agency Capability: An overview of the applicant agency, agency qualifications and agency history, including agency philosophy, goals, and history of experience with respect to the resettlement of and/or delivery of services to Entrants or similar populations. (A brief program description and the number of clients served should be included.)

Identification of the organization(s)/agency(ies) proposed for participation in the PSR project in the recruitment areas within the DMR and at the resettlement site(s); a description of their qualifications in relation to responsibilities; and the mechanism for coordination among these agencies.

2. Target Population: A description of the proposed resettlement population in terms of the criteria for acceptence into the program, the number of clients to be resettled at each resettlement site, and estimates of numbers expected to be recruited within the DMR.

3. Identification of Site(s): Identification of recruitment areas/sites within the DMR and resettlement sites.

4. Management Plan: A plan which: (a) identifies the agency/organization which will have overall fiscal and program responsibility, (b) identifies the organizational structure and lines of authority, (c) describes the overall proposed staffing plan and staff qualifications for the entire project, and (d) includes a comprehensive plan for coordination of activities between recruitment and resettlement components.

5. Program Phases: A narrative description of proposed program phases (recruitment, initial resettlement and on-going resettlement services), including a time-line (in months) or flow chart with milestones from start-up to termination and a plan for the phased resettlement of Entrants into the resettlement community.

Recruitment Areas/Sites—Requirements and Program Services

The application should set forth in detail for each recruitment area/site:

1. The identification of the agency responsible for recruitment at each area/site, agency staffing patterns and agency qualifications.

2. A description of the characteristics of the selected recruitment areas/sites within the DMR and the basis for the selection.

3. A description of linkages with applicant organization and with agency(ies) responsible for resettlement site operations. A plan for the coordination of the delivery of services and continuity of services between the recruitment area and resettlement site(s).

4. A description of strategies for:

a. Client outreach.

b. Client recruitment.

c. Client selection.

d. Client retention in the area of recruitment.

5. A description of the criteria for selection based upon such criteria as:

a. Prior employment history.

b. Personal motivation.

c. Need.

d. English language ability.

e. Health.

f. Education.

6. A description of recruitment processing and intake procedures.

7. The proposed time table for the resettlement of Entrants upon acceptance into the program.

8. A description of the client case record.

9. A description of health screening activities for Entrants accepted into the program, including a plan for the treatment of any minor illnesses prior to resettlement.

10. A description of how the recruitment agency and resettlement agency will jointly develop individualized service plans which will set forth the services to be delivered at the site of resettlement.

11. A description of the process to provide orientation to clients about the resettlement site(s) and the available services at the resettlement site(s).

12. A plan for transporting clients from the recruitment area(s) to the resettlement site(s).

12. A plan for initial reception at the site(s) of resettlement.

Resettlement Site Program Design and Services

For each resettlement site, the application must set forth in detail the following:

1. Identification of the agency/organization responsible for resettlement; this agency's staffing patterns and its qualifications.

2. A detailed qualitative and quantitative assessment of the proposed resettlement community(ies) with particular regard to:

(a) Availability of immediate or imminent prospects for full-time permanent employment consistent with the skill levels of the participants.

(b) Current level of employment and unemployment in various job markets.

(c) Location of housing which is safe, sanitary, available and affordable to the Entrants.

(d) Availability of affordable health and mental health care services.

(e) Availability of supportive social services for the target population, including daycare.

(f) Availability of community:

1. Employment services.

2. English language training services.

3. Vocational training services.

4. Vocational English language training services.

(g) A description of the community, its racial, ethnic and socio-cultural composition, including a description of existing refugee populations.

(h) Availability of educational services for dependent children.

(i) A discussion of the level of community receptivity regarding the Entrants to be resettled.

(j) A discussion of the presence or absence of an established Haitian population and/or established Haitian assistance association(s).

3. Core Services—these services will enable participating Entrants to meet basic transportation, food and shelter expenses during the initial resettlement period (usually 30 days and under extraordinary circumstances up to 60 days). The following core services are required to be provided to the client either in the form of a resettlement allowance or by direct payment of expenses by the resettlement agency:

(a) Reasonable transportation and moving costs from the site of recruitment to the site of resettlement.

(b) Living expenses during the initial resettlement period of time, including food, shelter, utilities and local transportation costs.

(c) One-time security deposits for housing and utilities.

(d) Essential furnishing/utensils.

(e) Stipends (in the absence of immediate employment income).

4. On-going Resettlement Services (provided during and after initial resettlement)—The applicant is required to set forth a detailed plan for the organization, delivery and coordination of services including:

(a) *Employment*—a plan for the development of employment resources prior to the arrival of clients; the job development, placement, upgrading services and job counseling activities.

(b) *On-The-Job Training*—a plan for developing options for on-the-job training, including subsidization of up to ½ of an Entrant's salary during a training period of up to 90 days, to an employer who guarantees job placement at the end of the training period.

(c) *Vocational Education*—fund for employed Entrants who wish to upgrade skills for employment mobility (this fund should not be used in lieu of employment).

(d) *English Language Training*—with an emphasis upon survival and vocational English Language Training.

(e) Orientation to the resettlement site and community resources which are available to the clients.

(f) Individual and group counseling (costs associated with client legal services are not allowable expenditures under this Notice).

(g) A plan to provide access to affordable health care services for up to one year, or until the Entrant has obtained medical coverage through his/her employer.

(h) Day care services for children that enables eligible employable adults to obtain and sustain employment.

(i) *Emergency assistance*—provision for one month's rent, food, transportation, utility payments etc., in cases of dire need.

(j) Crisis intervention services.

5. A description of the plan for tracking and monitoring client progress on a regular basis.

6. Development of a case record system which will include all significant decisions and events relating to the client, and, at a minimum includes the following information:

(a) Identifying data including family composition.

(b) Initial screening and intake forms.

(c) Case management plan developed in conjunction with agency responsible for recruitment.

(d) Case history/social history.

(e) Medical services, if available.

(f) Individual counseling plans.

(g) Program/case notes and incident reports.

(h) Evaluation and progress reports.
(i) Current employment data/information.
(j) Summary of program and client responsibilities signed by the Entrant.
(k) Copy of Form I-94.
(l) Referrals to other agencies.
(m) Final case report.

7. Identification of measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

8. Identification of voluntary and donated resources, including letters of intent from the agency or entity providing the resource.

9. Description of the local social service network.

10. A plan for program evaluation including identification of the evaluative criteria.

Administrative Requirements

Applicants are required to submit the following material as an addendum to the program proposal:

1. Agency Administration and Organization

(a) Agency organizational chart describing the agency as a whole and the organizational relationship of the proposed resettlement program to other agency programs.
(b) Comprehensive organizational chart of the proposed resettlement and recruitment components and their relationship.
(c) Copies of articles of incorporation.
(d) IRS status as a non-profit agency, if applicable.
(e) List of officers and board members, if applicable.
(f) List of professional affiliations and certifications.

2. Organizational Standards/Policies and Policies Regarding Clients

(a) Personnel handbook and standards of conduct.
(b) Statement regarding professional and agency liability.
(c) Copy of program rules/regulations.
(d) Copy of policy regarding the confidentiality of client information and records.
(e) Discussion of the method to be used to inform clients of program rules, regulatins and policies, including the confidentiality of client information.

3. Staff

(a) Job/position descriptions and resumes (if individuals have been identified for certain positions) for all personnel to be hired for both the recruitment and resettlement components, including documented evidence of the availability of bi-lingual and/or bi-cultural personnel; (b) Resumes and qualifications of program consultants must also be included.

4. Community Support at Resettlement Sites

(a) Letters of progam support from local political representatives, social service agencies, merchants, potential employers, etc. Letters should reflect writers' awareness of program's intent, potential federal funding source and location of project. Letters should also contain a recommendation or comment regarding the proposed resettlement program.
(b) Verification that the applicant has notified the applicable State Refugee Coordinator of the organization's intent to submit a proposal.
(c) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided.

Finance and Budget

Applicants are required to submit the following materials as an addendum to the proposal:

1. A copy of the latest financial audit of the applicant.
2. A description of the Financial Management System of the applicant.
3. A listing of other Federal, State, local or foundation grants or contracts, etc., being administered by the applicant. This material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant/contract performance period, and name, address and telephone number of grant and/or contracts officer (Federal, State or local).
4. Subgrants and/or Subcontracts.
(a) Identify all proposed services which are to be subgranted/subcontracted.
(b) Provide relevant background material regarding the proposed subgrantee/subcontractor.
(c) Provide letters from the proposed subgrantee(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

Budget

The proposed budget will be examined by the Grants Officer to verify the costs data, to evaluate specific elements of costs and to determine if costs are necessary, reasonable and allowable under applicable statutes and regulations. The following budget structure should be used to provide appropriate costs breakdowns. Detailed costs justification should also be attached to the budget for each budget category:

Personnel

Show salaries and wages only. Fees and expenses for consultants should be included in line "other". The name and title, salary amounts and level of effort must be identified for each position. A current vitae is required for each position.

Fringe Benefits

Submit a current copy of the negotiated fringe benefit rate. If fringe benefits are applicable to direct salaries and wages and treated as part of the indirect cost rate negotiation agreement, leave blank.

Travel

Use only for travel (domestic) of employees on the grant. Include estimated cost breakout for airfare, per diem, number of days, number of persons traveling and purpose of travel. Travel for consultants should not go in this line, nor should local transportation (i.e., where no out-of-town trip is involved).

Equipment

Use only for non-expendable personnel property, which is defined as follows:

Non-expendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property. Personal property means property of any kind except real property.

Each item of non expendable personal property costing $1,000 and each item of general purpose equipment costing over $500 must be identified and explained (i.e., office equipment and furnishings which are usable for activities other than the technical, specialized aspects of the grant program).

Supplies

Include all tangible personal property except that which is included in the equipment line. Requests in excess of $500 per category of tangible personal property (supply) must be identified and explained.

Contractual

Use for procurement contracts (except those which belong on other line items such as equipment, supplies, and construction). It must not include

payments to individuals such as stipends, consulting fees, benefits etc.

Renovation

Costs for alteration and renovation must be explained in detail.

Entrant Cost

All costs directly related to entrants such as stipends, and allowances, temporary housing, essentials, furnishings and utensils, food or food allowances, personal items, clothing, local transportation, assistance payments, medical services, etc., must be identified and explained.

Other

All direct costs not clearly covered in categories listed above i.e., consulting costs, local transportation, space and equipment rental, and van usage must be identified and explained. Request for any item identified in the Office of Management and Budget Circular (OMB A–122) which require approval by the CRS Grants Officer must be identified and explained. Costs for space rental should be identified by square feet. Also identify utilities and breakout costs per month.

Indirect Cost

Identify and explain indirect cost items.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Grant Review Panel. An application may be rejected if:

1. The application omits:

a. Detailed assessments of the proposed resettlement community(ies).

b. The rationale for the selection of recruitment areas within the DMRs.

c. A comprehensive management plan, including a plan for the coordination of activities between the recruitment and resettlement components.

d. Documented written evidence of community support for the resettlement program.

e. Comprehensive information regarding subcontractor(s) and/or subgrantees.

f. Job/position descriptions for all personnel to be hired for both the recruitment and resettlement components of the program.

g. Organizational charts describing the agency as a whole and organizational charts of the proposed recruitment and resettlement components.

h. A comprehensive line-item budget with appropriate descriptive narative.

i. A copy of the latest financial audit of the applicant.

2. The application is from an ineligible applicant.

3. The application is received after the closing date.

Criteria for Evaluating Applications

Grant applications will be evaluated according to the following criteria:

1. The quality of the proposal's project management and staffing plans as demonstrated by:

- The adequacy of the plan for program management and the plan for coordination between the recruitment and resettlement components of the program.
- The adequacy of the qualifications of organizations participating in the project in relation to proposed roles, and the extent to which the organizations have demonstrated track records as providers of services to Haitian Entrants or similar populations.
- The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.
- The extent to which subgrantee(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.
- The adequacy of the plans for staff supervision of each agency/organization participating in the project.
- The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibility of the staff in the project, and the education and relevant experience required for the position.
- Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, director and progress of the program. (20 points)

2. The extent to which the qualitative an quantitative assessment of the resettlement site(s) provides justification for their selection as demonstrated by:

- The availability of full-time permanent employment opportunities at skills levels appropriate to Haitian PSR clients.
- The level of employment and unemployment in various job markets.
- The availability of housing which is safe, sanitary and affordable to the client.
- The availability of affordable health care services.
- The capacity of the community to provide: (1) employment services, (2) English Language training, (3) vocational training, (4) educational and social services (including daycare) on a timely and appropriate basis. (15 points)

3. *Program Services*—The applicant's response to the required program services, including a description of program resources which demonstrates:

- The capacity of the program to offer services which meet the needs of the clients.
- Utilization of resources in a manner which promotes and fosters cultural identification and mutual support.
- The capacity to provide and sustain full-time permanent employment.
- Sensitivity to the issues of culture, race, ethnicity and native language.
- Preparation for and achievement of personal and financial independence for Entrants in an expeditious and effective manner. (15 points)

4. The degree to which the applicant has provided written documented evidence of community support and acceptance of the program at the site(s) of resettlement. (10 points)

5. The extent to which the assessment of the recruitment site(s)/area(s) provides justification for their selection as demonstrated by:

- The assessed needs of the Haitian Entrants in the site(s)/area(s) of recruitment in terms of: (1) Available employment; (2) affordable, safe and sanitary housing; (3) available social services.
- The size and composition of the Haitian population in the proposed recruitment site(s)/area(s).
- The ability of the applicant to effectively recruit clients from the proposed recruitment site(s)/area(s). (12 points)

6. The adequacy of client recruitment, client outreach and client retention strategies. (10 points)

7. The adequacy of the applicant's response regarding the requirements and program services for each recruitment area/site as demonstrated by:

- The agency staffing plan and staff qualifications.
- The description of linkages with the applicant organization and with the agency(ies) responsible for resettlement site operations.
- The adequacy of the proposed services.
- The adequacy of the methodology for the identification and selection of program participants.
- The description of the plan to provide health screening services to program participants.
- The description of:

a. Processing and intake procedures.

b. Orientation activities.

c. The plan for transporting clients to the site(s) of resettlement.

• The adequacy of the plan for developing individual client service/case plans. (10 points)

8. The reasonableness of the proposed budget and budget narrative, for both the recruitment and resettlement components, in relation to the proposed program activities. (5 points)

9. The plan for project evaluation, including the methodology and criteria for evaluating the program. (3 points)

Application Request and Submission

Eligible applicants may request grant applications from the Community Relations Service (CRS), Department of Justice (DOJ), Grants Management Office, Room 370; 5550 Friendship Boulevard; Chevy Chase, Maryland 20815; Attention Cynthia Bowie, (301) 402–5810. For program related information, contact either Kenneth Leutbecker, (301) 492–5809 or 1–800 424–9304 or Jay LaRoche, (305) 350–4261.

Applicants must submit a signed original and two (2) copies of the proposal to the Attention of Cynthia Bowie, Grants Management Office, Community Relations Services.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of one of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with the local post office.

Applicants are encouraged to use registered or at least first class mail. Each late applicant will be notified that the applications will not be considered.

Applications postmarked on or before August 20, 1985 shall be considered timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Justice, Community Relations Service, Room 370, 5550 Friendship Boulevard; Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand-delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Applicable Regulations

The following codes and regulations apply to grants awarded through this notice:

Title 41—Code of Federal Regulations

Title 28—Code of Federal Regulations

Part 42, Subpart C—Non-discrimination in Federally assisted programs, Title VI of the Civil Rights Act of 1964

Part 42, Subpart D—Non-discrimination in Federally assisted programs-implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979

Part 42, Subpart G—Non-discrimination based on handicap in Federally assisted programs

Part 42, Subpart H—Procedures for complaints of employment discrimination filed against recipients of Federal financial assistance

Office of Management and Budget (OMB) Circular A–110

Office of Management and Budget (OMB) Circular A–122

Records and Reports

CRS Grantees are required to maintain all Entrant records, program and financial information and/or data for a three (3) year period after the end date of the program performance period.

At the conclusion of the three (3) year retention period, CRS will instruct the grantee regarding the final disposition of Entrant records, program and financial information and/or other data.

Grantees shall, within thirty (30) days following the end of each calendar quarter, furnish to the Senior Grants Management Specialist, CRS, an original and two copies of both the Financial Status Report (SF 269) and the Federal Cash Transaction Report (SF 272).

Within ninety (90) days of the end date of the project performance and budget periods, Grantees are required to submit to the Senior Grants Management Specialist, CRS, an original and two copies of a final Financial Status Report (SF 269).

Grantees shall, within thirty (30) days following the end of each calendar quarter, provide the designated CRS Program Officer with a quarterly program progress report.

Gilbert G. Pompa,

Director, Community Relations Service.

July 1, 1985.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all states have the option of designing procedures for review and comment on Federally assisted programs.

Each applicant is required to notify each state in which it is proposing activities under Planned Secondary Resettlement Program and to comply with the State(s) established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC). Following is a list of SPOCs:

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3485 Norman Bridge Road, P.O. Box 2939, Montgomery, Alabama 38105–0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the state's E.O. 12372 process should be directed to: Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division,

Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning the State's E.O. 12372 should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For information contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 532 East 12th Street, Des Moines, Iowa 50139, Tel. (515) 281–3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana, 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 2120–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727–7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373–0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Building, Rm. 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296–3698

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202

For information contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (801) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

Devid G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN, 806, 363 West State Street, Trenton, New Jersey 06625–0803, Tel. (609) 292–6613

Note.—Correspondence and questions concerning the State's E.O. process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Management and Contracts Review Division, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 67503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Mr. Leondard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108, Attn: Charles Griffiths, Executive Director, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2658

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pandleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (815) 741–1678

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhn, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street, CEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266–8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, DM 96950

State requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 60 days after the date of publication, addressed to:

Richard Gutierrez, Coordinator, Immigration and Refugee Affairs, Community Relations Service, 5550 Friendship Blvd., Suite 330, Chevy Chase, MD 20815

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federal register

Friday
July 5, 1985

Part VIII

Department of Justice

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Cuban Entrants From South Florida

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Cuban Entrants From South Florida

AGENCY: Community Relations Service (CRS), Justice.

ACTION: Notice of Availability of funding for grants to assist interested Cuban Entrants from South Florida to resettle to favorable communities outside the State of Florida.

SUMMARY: This announcement governs the award of grants to public or private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies, to provide eligible Cuban Entrants currently residing in South Florida with an opportunity to relocate in a planned way, to communities outside the State of Florida which offer more favorable and long-term employment opportunities.

Planned Secondary Resettlement (PSR) differs from "secondary migration" in that PSR involves a considered assessment of the resettlement area prior to relocation, identification of employment opportunities in the areas of resettlement, delivery of comprehensive supportive services, and a coordinated transition from the area of recruitment to the area of resettlement with notification of appropriate government authorities and other pertinent organizations or entities.

DATE: Closing Date: 5:00 p.m., Eastern Daylight Time; August 20, 1985.

Proposals will be evaluated by an independent grant review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Director, Community Relations Service. Grants will be awarded subject to the availability of funds.

Authorization: Authority for this activity is contained in Title V, section 501(c) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422).

Available Funds: Approximately $300,000 will be available for this grant program in Fiscal Year 1985. The Director estimates these funds could support one grant award. This estimate does not bind the Community Relations Service to any specific level of funding; however, the estimate serves as notification of the maximum amount of funding which could be awarded under this notice.

Future fiscal year funding for this grants program will be contingent upon Federal appropriations. If adequate funds are available, the Director, CRS, anticipates continuation of this program.

Awards normally will not exceed a 24 month program performance period for recruitment, resettlement, an on-going services.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, are eligible to apply for funds under this PSR program

For-profit organization incorporated under State law which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, and which can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been requested, are also eligible to apply.

If an Entrant group or an organization representing Entrants interested in relocating to a favorable site wishes to participate in PSR, they are encouraged to establish linkages with an establishment non-profit or profit organization or agency which would act as the primary applicant.

Any combination of eligible organizations may join together to submit an application so long as one organization is clearly identified as the responsible applicant.

The geographical location of the applicant is not restricted to its selected areas of recruitment or resettlement; however, the applicant must be able to show that its network of local affiliates or its subcontractor(s) or subgrantee(s) will be able to effectively deliver services.

Eligible Client Population

Under the terms of this announcement, the eligible client population will consist of Cubans who:

1. Are currently residing in the State of Florida.

2. Have not had a prior secondary resettlement opportunity.

3. Fall within one of the following categories.

a. Domestic units comprised of two or more eligible, employable adults with dependent children.

b. Domestic units comprised of a single, eligible, employable adult with dependent children.

c. Single, eligible, employable adults without dependent children.

4. Meet the definition of Cuban/Haitian Entrant as defined below:

Definition of Cuban/Haitian Entrant

(A) A Cuban/Haitian Entrant is defined by Title V, section 501(e) (Pub. L. 96–422) as:

(1) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti—

(A) Who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with Immigration and Naturalization Service; and

(B) With respect to whom a final, nonappealable, and legally enforceable order of exclusion or deportation has not been entered.

Adult Cubans who do not meet the definition of Cuban/Haitian Entrant as defined above, cannot be considered for participation in this program.

Adult Cubans who meet all the above criteria except for employability and are members of a domestic unit will be considered for participation in this program at the discretion of the Community Relations Service.

Priority will be given to the resettlement of domestic units with dependent children, especially domestic units in which all family members are Entrants. This assistance program will focus resources on the resettlement of eligible employable adults and their dependents.

Information used to determine the legal status and program eligibility of potential candidates for resettlement under PSR will be treated as confidential.

Recruitment Area: South Florida

Applicants shall submit one application which addresses the recruitment, resettlement processes and program services for Cuban Entrants. There is no geographical restriction upon areas of recruitment, except that the areas fall within what is generally referred to as South Florida (areas south of or east of Lake Okeechobee).

A maximum of three sites or areas may be selected for client recruitment. A maximum of two resettlement sites may be chosen for relocation.

A minimum of 25 eligible clients and a maximum of 50 eligible clients may be resettled in each resettlement site, if two resettlement sites are chosen. A maximum of 50 clients may be resettled at the site, if only one resettlement site is selected by the applicant.

It is expected that applicants will design their programs realistically so that the scope of recruitment and resettlement does not exceed the organizational capacity of the primary applicant and its subcontractor(s)/subgrantee(s) or local affiliates to perform the required services.

The applicant must submit separate, detailed plans for each recruitment area/site selected. The application must also specify the area(s)/site(s) of resettlement and must include detailed, plans for the targeted area(s)/site(s) of resettlement.

Awards for this grant program will be competitive.

Supplementary Information

Purpose and Scope

The purpose of this announcement is to provide an opportunity for Cuban Entrants residing within South Florida who have been unable to find full-time, permanent employment to relocate to other areas of the United States that offer favorable prospects for employment.

Clients are eligible for services for one year from the date they are selected for the program.

Planned Secondary Resettlement serves two major objectives:

a. To increase financial self-sufficiency among Cuban Entrants.

1. To ease the burden upon areas heavily impacted by Entrant populations while increasing the use of under-utilized communities.

Services provided under these grants will have the specific goals of assisting Entrants to attain self-sufficiency through a resettlement experience that focuses upon permanent employment and social adaptation to the site where Entrants are resettled. Each client will receive services for a period of one year from the date of selection for the program.

Characteristics of Resettlement Sites

It is expected that resettlement sites proposed for PSR will have demonstrably favorable economic and social conditions for Entrant resettlement. In general, the following conditions are required to be present in the proposed resettlement site:

- The availability of full-time permanent employment at skills levels appropriate to PSR clients.
- Safe and sanitary housing which is available and affordable to the Entrant.
- The capacity to provide needed services such as job placement, English language training opportunities and other social services on a timely and appropriate basis.
- An expanding job market in skill areas in which PSR clients would be qualified or could be trained.
- A minimum of racial discrimination or community tension likely to have an adverse effect upon Entrants.
- Available low-cost health care services.

The existence of a stable community of the same ethnicity as the Entrants or similar socio-cultural background is highly desirable, but not mandatory.

Resettlement supported by PSR grants must be directed to assisting Entrants to relocate to communities which provide significantly better opportunities for full-time permanent employment of eligible adults than exist in their current communities of residence or work. No grants will be awarded to support resettlement in areas where the job market is insufficient to accommodate the relocated Entrants or where the unemployment rate is significantly above the national average.

CRS will not entertain proposals which include resettlement into states or areas impacted by Entrants unless the applicant can guarantee permanent full-time employment and service delivery in such areas. Resettlement within the State of Florida is not permissible under this Notice.

Proposals designating other areas experiencing Cuban Entrant impact such as New York, New Jersey, Texas and California will be carefully evaluated as to their appropriateness as PSR sites.

Characteristics of Recruitment Areas

Recruitment areas must lie within the geographic area generally known as South Florida, as previously outlined above. The term "area" rather than "site" is used as recruitment may either occur within the vicinity of a particular community or within a radius of the applicant's or subcontractor(s)/subgrantee(s) administrative office.

It is expected that applicants will provide a rationale for the selection of recruitment area(s) based upon:

1. The assessed needs of the Cuban Entrants in the area in terms of: (a) Available employment, (b) safe, sanitary and affordable housing and (c) available social services.

2. The size and composition of Cuban populations in these areas.

3. The ability of the applicant to recruit effectively from these areas.

Application Contents

Program Design

The application should set forth in detail the following:

1. Organization/Agency Capability: An overview of the applicant agency, agency qualifications, and agency history, including agency philosophy, goals, and history of experience with respect to the resettlement of and/or delivery of services to Entrants or similar populations. (A brief program description and the number of clients served should be included.)

Identification of the organization(s)/agency(ies) proposed for participation in the PSR project in the recruitment areas within South Florida and at the resettlement sites; a description of their qualifications in relation to responsibilities; and the mechanism for coordination among these agencies.

2. Target Population: A description of the proposed resettlement population in terms of the criteria for acceptance into the program, the number of clients to be resettled at each resettlement site, and estimates of numbers expected to be recruited within South Florida.

3. Identification of Site(s): Identification of recruitment areas/sites within South Florida and the resettlement sites.

4. Management Plan: A plan which (a) identifies the agency/organization which will have overall fiscal and program responsibility, (b) identifies the organizational structure and lines of authority, (c) describes the overall proposed staffing plan and staff qualifications for the entire project, and (d) includes a comprehensive plan for coordination of activities between the recruitment and resettlement components.

5. Program Phases: A narrative description of proposed program phases (recruitment, initial resettlement, and ongoing resettlement services), including a time-line (in months) or flow chart with milestones from start-up to termination, and a plan for the phased resettlement of Entrants into the resettlement community.

Recruitment Areas/Sites—Requirements and Program Services

The application should set forth in detail for each recruitment area/site:

1. The identification of the agency responsible for recruitment at each area/site, agency staffing patterns and agency qualifications.

2. A description of the characteristics of the selected recruitment areas/sites within South Florida and the basis for the selection.

3. A description of linkages with applicant organization and with agency(ies) responsible for resettlement site operations. A plan for the coordination of the delivery of services and continuity of services between the recruitment area and resettlement site(s).

4. A description of strategies for:

a. Client outreach.

b. Client recruitment.

c. Client selection.

d. Client retention in the area of recruitment.

5. A description of the criteria for selection based upon such criteria as:

a. Prior employment history.

b. Personal motivation.

c. Need.

d. English language ability.

e. Health.

f. Education.

6. A description of recruitment processing and intake procedures.

7. The proposed time table for the resettlement of Entrants upon acceptance into the program.

8. A description of the client case record.

9. A description of health screening activities for Entrants accepted into the program, including a plan for the treatment of any minor illnesses prior to resettlement

10. A description of how the recruitment agency and resettlement agency will jointly develop individualized service plans which will set forth the services to be delivered at the site of resettlement.

11. A description of the process to provide orientation to clients about the resettlement site(s) and the available services at the resettlement site(s).

12. A plan for transporting clients from the recruitment area(s) to the resettlement site(s).

13. A plan for initial reception at the site(s) of resettlement.

Resettlement Site Program Design and Services

For each resettlement site, the application must set forth in detail the following:

1. Identification of the agency/organization responsible for resettlement; this agency's staffing patterns and its qualifications.

2. A detailed qualitative and quantitative assessment of the proposed resettlement community(ies) with particular regard to:

(a) Availability of immediate or imminent prospects for full-time permanent employment consistent with the skill levels of the participants.

(b) Current level of employment and unemployment in various job markets.

(c) Location of housing which is safe, sanitary, available and affordable to the Entrants.

(d) Availability of affordable health and mental health care services.

(e) Availability of supportive social services for the target population, including daycare.

(f) Availability of community:

1. Employment services.

2. English language training services.

3. Vocational training services.

4. Vocational English language training services.

(g) A description of the community, its racial, ethnic and socio-cultural composition, including a description of existing refugee populations.

(h) Availability of educational services for dependent children.

(i) A discussion of community receptivity regarding the Entrants to be resettled.

(j) A discussion of the presence or absence of an established Cuban population and/or established Cuban assistance association(s).

3. *Core Services*—these services will enable participating Entrants to meet basic transportation, food and shelter expenses during the initial resettlement period (usually 30 days and under extraordinary circumstances up to 60 days). The following core services are required to be provided to the client either in the form of a resettlement allowance or by direct payment of expenses by the resettlement agency:

(a) Reasonable transportation and moving costs from the site of recruitment to the site of resettlement.

(b) Living expenses during the initial resettlement period of time, including food, shelter, utilities and local transportation costs.

(c) One-time security deposits for housing and utilities.

(d) Essential furnishings/utensils.

(e) Stipends (in the absence of immediate employment income).

4. On-going Resettlement Services (provided during and after initial resettlement)—The applicant is required to set forth a detailed plan for the organization, delivery and coordination of services including:

(a) Employment—a plan for the development of employment resources prior to the arrival of clients; the job development, placement, upgrading services and job counseling activities.

(b) On-The-Job Training—a plan for developing options for on-the-job training, including subsidization of up to ½ of an Entrant's salary during a training period of up to 90 days, to an employer who guarantees job placement at the end of the training period.

(c) Vocational Education—fund for employed Entrants who wish to upgrade skills for employment mobility (this fund should not be used in lieu of employment).

(d) English Language Training—with an emphasis upon survival and vocational English Language Training.

(e) Orientation to the resettlement site and the community resources which are available to the clients.

(f) Individual and group counseling (cost associated with client legal services are not allowable expenditures under this Notice).

(g) A plan to provide access to affordable health care services for up to one year, or until the Entrant has obtained medical coverage through his/her employer.

(h) Day care services for children that enables eligible employable adults to obtain and sustain employment.

(i) Emergency assistance—provision for one month's rent, food, transportation, utility payments etc., in cases of dire need.

(j) Crisis intervention services.

5. A description of the plan for tracking and monitoring client progress on a regular basis.

6. Development of a case record system which will include all significant decisions and events relating to the client, and, at a minimum includes the following information:

(a) Identifying data including family composition.

(b) Initial screening and intake forms.

(c) Case management plan developed in conjunction with agency responsible for recruitment.

(d) Case history/social history.

(e) Medical services, if available.

(f) Individual counseling plans.

(g) Program/case notes and incident reports.

(h) Evaluation and progress reports.

(i) Current employment data/information.

(j) Summary of program and client responsibilities signed by the Entrant.

(k) Copy of Form I–94.

(l) Referrals to other agencies.

(m) Final case report.

7. Identification of measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

8. Identification of voluntary and donated resources, including letters of intent from the agency or entity providing the resource.

9. Description of the local social service network.

10. A plan for program evaluation including identification of the evaluative criteria.

Administrative Requirements

Applicants are required to submit the following material as an addendum to the program proposal:

1. Agency Administration and Organization

(a) Agency organizational chart describing the agency as a whole and the organizational relationship of the proposed resettlement program to other agency programs.

(b) Comprehensive organizational chart of the proposed resettlement and recruitment components and their relationship.

(c) Copies of articles of incorporation.

(d) IRS status as a non-profit agency, if applicable.

(e) List of officers and board members, if applicable.

(f) List of professional affiliations and certifications.

2. Organizational Standards/Policies and Policies Regarding Clients

(a) Personnel handbook and standards of conduct.

(b) Statement regarding professional and agency liability.

(c) Copy of program rules/regulations.

(d) Copy of policy regarding the confidentiality of client information and records.

(e) Discussion of the method to be used to inform clients of program rules, regulations and policies, including the confidentiality of client information.

3. Staff

(a) Job/position descriptions and resumes (if individuals have been identified for certain positions) for all personnel to be hired for both the recruitment and resettlement components, including documented evidence of the availability of bi-lingual and/or bi-cultural personnel; (b) Resumes and qualifications of program consultants must also be included.

4. Community Support at Resettlement Sites

(a) Letters of program support from local political representatives, social service agencies, merchants, potential employers, etc. Letters should reflect writers' awareness of program's intent, potential federal funding source and location of project. Letters should also contain a recommendation or comment regarding the proposed resettlement program.

(b) Verification that the applicant has notified the applicable State Refugee Coordinator of the organization's intent to submit a proposal.

(c) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided.

Finance and Budget

Applicants are required to submit the following materials as an addendum to the proposal:

1. A copy of the latest financial audit of the applicant.

2. A description of the Financial Management System of the applicant.

3. A listing of other Federal, State, local or foundation grants or contracts, etc., being administered by the applicant. This material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant/contract performance period, and name, address and telephone number of grant and/or contracts officer (Federal, State or local).

4. Subgrants and/or Subcontracts.

(a) Identify all proposed services which are to be subgranted/subcontracted.

(b) Provide relevant background material regarding the proposed subgrantee/subcontractor.

(c) Provide letters from the proposed subgrantee(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

Budget

The proposed budget will be examined by the Grants Officer to verify the costs data, to evaluate specific elements of costs and to determine if costs are necessary, reasonable and allowable under applicable statutes and regulations. The following budget structure should be used to provide appropriate costs breakdowns. Detailed costs justification should also be attached to the budget for each budget category:

Personnel

Show salaries and wages only. Fees and expenses for consultants should be included in line "other". The name and title, salary amounts and level of effort must be identified for each position. A current vitae is required for each position.

Fringe Benefits

Submit a current copy of the negotiated fringe benefit rate. If fringe benefits are applicable to direct salaries and wages and treated as part of the indirect cost rate negotiation agreement, leave blank.

Travel

Use only for travel (domestic) of employees on the grant. Include estimated cost breakout for airfare, per diem, number of days, number of persons traveling and purpose of travel. Travel for consultants should not go in this line, nor should local transportation (i.e., where no out-of-town trip is involved).

Equipment

Use only for non-expendable personnel property, which is defined as follows:

Non-expendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $300 or more per unit. A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property. Personal property means property of any kind except real property.

Each item of non-expendable personal property costing $1,000 and each item of general purpose equipment costing over $500 must be identified and explained (i.e., office equipment and furnishings which are usable for activities other than the technical, specialized aspects of the grant program).

Supplies

Include all tangible personal property except that which is included in the equipment line. Requests in excess of $500 per category of tangible personal property (supply) must be identified and explained.

Contractual

Use of procurement contracts (except those which belong on other line items such as equipment, supplies, and construction). It must not include payments to individuals such as stipends, consulting fees, benefit, etc.

Renovation

Costs for alteration and renovation must be explained in detail.

Entrant Cost

All costs directly related to entrants such as stipends, and allowances, temporary housing essentials, furnishings and utensils, food or food allowances, personal items, clothing, local transportation, assistance payments, medical services, etc., must be identified and explained.

Other

All direct costs not clearly covered in categories listed above i.e., consulting

costs, local transportation, space and equipment rental, and van usage must be identified and explained. Request for any item identified in the Office of Management and Budget Circular (OMB A–122) which require approval by the CRS Grants Officer must be identified and explained. Costs for space rental should be identified by square feet. Also identify utilities and breakout costs per month.

Indirect Cost

Identify and explain indirect cost items.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Grant Review Panel. An application may be rejected if:

1. The application omits:

a. Detailed assessments of the proposed resettlement community(ies).

b. The rationale for the selection of recruitment areas within South Florida.

c. A comprehensive management plan, including a plan for the coordination of activities between the recruitment and resettlement components.

d. Documented written evidence of community support for the resettlement program.

e. Comprehensive information regarding subcontractor(s) and/or subgrantees.

f. Job/position descriptions for all personnel to be hired for both the recruitment and resettlement components of the program.

g. Organizational charts describing the agency as a whole and organizational charts of the proposed recruitment and resettlement components.

h. A comprehensive line-item budget with appropriate descriptive narrative.

i. A copy of the latest financial audit of the applicant.

2. The application is from an ineligible applicant.

3. The application is received after the closing date.

Criteria for Evaluating Applications

Grant applications will be evaluated according to the following criteria:

1. The quality of the proposal's project management and staffing plans as demonstrated by:

- The adequacy of the plan for program management and the plan for coordination between the recruitment and resettlement components of the program.
- The adequacy of the qualifications of organizations participating in the project in relation to proposed roles, and the extent to which these organizations have demonstrated track records as providers of services to Cuban Entrants or similar populations.
- The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.
- The extent to which subgrantee(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.
- The adequacy of the plans for staff supervision of each agency/organization participating in the project.
- The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibility of the staff in the project, and the education and relevant experience required for the position.
- Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and progress of the program. (20 points)

2. The extent to which the qualitative and quantitative assessment of the resettlement site(s) provides justification for their selection as demonstrated by:

- The availability of full-time permanent employment opportunities at skills levels appropriate to Cuban PSR clients.
- The level of employment and unemployment in various job markets.
- The availability of housing which is safe, sanitary and affordable to the client.
- The availability of affordable health care services.
- The capacity of the community to provide: (1) Employment services, (2) English Language training, (3) vocational training, (4) educational and social services (including daycare) on a timely and appropriate basis. (15 points)

3. *Program Services*—The applicant's response to the required program services, including a description of program resources which demonstrates:

- The capacity of the program to offer services which meet the needs of the clients.
- Utilization of resources in a manner which promotes and fosters cultural identification and mutual support.
- The capacity to provide and sustain full-time permanent employment.
- Sensitivity to the issues of culture, race, ethnicity and native language.
- Preparation for and achievement of personal and financial independence for Entrants in an expeditious and effective manner. (15 points)

4. The degree to which the applicant has provided written documented evidence of community support and acceptance of the program at the site(s) of resettlement. (10 points)

5. The extent to which the assessment of the recruitment site(s)/area(s) provides justification for their selection as demonstrated by:

- The assessed needs of the Cuban Entrants in the site(s)/area(s) of recruitment in terms of: (1) Available employment; (2) affordable, safe and sanitary housing; (3) available social services.
- The size and composition of the Cuban population in the proposed recruitment site(s)/area(s).
- The ability of the applicant to effectively recruit clients from the proposed recruitment site(s)/area(s). (12 points)

6. The adequacy of client recruitment, client outreach and client retention strategies. (10 points)

7. The adequacy of the applicant's response regarding the requirements and program services for each recruitment area/site as demonstrated by:

- The agency staffing plan and staff qualifications.
- The description of linkages with the applicant organization and with the agency(ies) responsible for resettlement site operations.
- The adequacy of the proposed services.
- The adequacy of the methodology for the identification and selection of program participants.
- The description of the plan to provide health screening services to program participants.
- The description of:

a. Processing and intake procedures.

b. Orientation activities.

c. The plan for transporting clients to the site(s) of resettlement.

- The adequacy of the plan for developing individual client service/case plans. (10 points)

8. The reasonableness of the proposed budget and budget narrative, for both the recruitment and resettlement components, in relation to the proposed program activities. (5 points)

9. The plan for project evaluation, including the methodology and criteria for evaluating the program. (3 points)

Application Request and Submission

Eligible applicants may request grant applications from the Community Relations Service (CRS), Department of Justice (DOJ), Grants Management Office, Room 370; 5550 Friendship

Boulevard; Chevy Chase, Maryland 20815; Attention Cynthia Bowie, (301) 492–5810. For program related information, contact either Kenneth Leutbecker, (301) 492–5809 or 1–800 424–9304 or Jay LaRoche, (305) 350–4261.

Applicants must submit a signed original and two (2) copies of the proposal to the Attention of Cynthia Bowie, Grants Management Office, Community Relations Service.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of one of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice or receipt from a commerical carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with the local post office.

Applicants are encouraged to use registered or at least first class mail. Each late application will be notified that the applicant will not be considered.

Applications postmarked on or before August 20, 1985 shall be considered timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Justice, Community Relations Service, Room 370, 5550 Friendship Boulevard; Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand-delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Applicable Regulations

The following codes and regulations apply to grants awarded through this notice:

Title 41—Code of Federal Regulations

Title 28—Code of Federal Regulations

Part 42, Subpart C—Non-discrimination in Federally assisted programs, Title VI of the Civil Rights Act of 1964

Part 42, Subpart D—Non-discrimination in Federally assisted programs—implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979

Part 42, Subpart G—Non-discrimination based on handicap in Federally assisted programs

Part 42, Subpart H—Procedures for complaints of employment discrimination filed against recipients of Federal financial assistance

Office of Management and Budget (OMB) Circular A–110

Office of Management and Budget (OMB) Circular A–122

Records and Reports

CRS Grantees are required to maintain all Entrant records, program and financial information and/or data for a three (3) year period after the end date of the program performance period.

At the conclusion of the three (3) year retention period, CRS will instruct the grantee regarding the final disposition of Entrant records, program and financial information and/or other data.

Grantees shall, within thirty (30) days following the end of each calendar quarter, furnish to the Senior Grants Management Specialist, CRS, an original and two copies of both the Financial Status Report (SF 269) and the Federal Cash Transaction Report (SF 272).

Within ninety (90) days of the end date of the project performance and budget periods, Grantees are required to submit to the Senior Grants Management Specialist, CRS, an original and two copies of a final Financial Status Report (SF 269).

Grantees shall, within thirty (30) days following the end of each calendar quarter, provide the designated CRS Program Officer with a quarterly program progress report.

Gilbert G. Pompa,

Director, Community Relations Service.

July 1, 1985.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all states have the option of designating procedures for review and comment on Federally assisted programs.

Each applicant is required to notify each state in which it is proposing activities under Planned Secondary Resettlement Program and to comply with the state(s) established review procedures. This may be done by contacting the applicable state Single Point of Contact (SPOC). Following is a list of SPOCs:

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, P.O. Box 2939, Montgomery, Alabama 38105 –0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4298.

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For information contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 532 East 12th Street, Des Moines, Iowa 50139, Tel. (515) 281–3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40610, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capital Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Integovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21210–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Developent, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts, 02202, Tel. (617) 727–7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing Michigan 48909, Tel. (517) 373–0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capital Square Building, Rm. 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296–3698

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg, 500 High Street, Jackson, Mississppi 39202

For information contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (801) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capital Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, C/O Office of the Lieutenant Governor, Capital Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Reserch Office, P.O. Box 94601, Room 1321, State Capitol Lincoln, Nebraska 68509, Tel. (402) 417–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (7023) 885–4420

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

Devid G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 806, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence and questions concerning the State's E.O. process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025.

New Mexico

Peter C. Pence, Director, Management and Contracts Review Divison, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 67503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For information contact: Mr. Leondard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Fedral Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Councjl, P.O. Box 1288, Harrisburg, Pennsylvania 17108, Attn: Charles Griffiths, Executive Director, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Province, Rhode Island 02907, Tel. (401) 277–2658

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pandleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (815) 741–1678

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhn, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Buidling, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street, CEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Note—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266–8349.

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574.

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, DM 96950

State Requirements

Comments and recommendations relative to applications submitted under this soliciation should be mailed no later than 60 days after the date of publication, addressed to: Richard Gutierrez, Coordinator, Immigration and Refugee Affairs, Community Relations Service, 5550 Friendship Blvd., Suite 330, Chevy Chase, MD 20815

[FR Doc. 85–16043 Filed 7–3–85; 8:45 am]

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federal register

Friday
July 5, 1985

Part IX

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Western Gulf of Mexico; Sale 102

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 102

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 3301 North Causeway Boulevard, Metairie, Louisiana 70002. Bids may be delivered in person to the above address during normal business hours (8:00 a.m. to 4:00 p.m., c.s.t.) until the Bid Submission Deadline at 10:00 a.m., c.s.t., August 13, 1985. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted on the day of Bid Opening, August 14, 1985. Delivery by mail should be addressed to P.O. Box 7944, Metairie, Louisiana 70010, and must be received by the Bid Submission Deadline. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10:00 a.m., August 13, 1985. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m. August 14, 1985. Bid Opening Time will be 9:00 a.m. August 14, 1985, at the New Orleans Convention Center, Ballroom, in New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 50 FR 13250 on April 3, 1985.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 102, (map number(s), map name(s), and block number(s)), not to be opened until 9:00 a.m., c.s.t., August 14, 1985," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 102, NG 15-1, East Breaks, Block 701, not to be opened until 9:00 a.m., c.s.t., August 14, 1985." For those blocks which must be bid upon together as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portion of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus of $150 or more per acre, or fraction thereof. All leases resulting from this sale will provide for a yearly rental payment of $3 per acre, or fraction thereof. All leases awarded will provide for a minimum royalty of $3 per acre, or fraction thereof. The bidding systems to be utilized for this sale apply to blocks or bidding units as shown on map 2 (see paragraph 12). The following bidding systems will be used.

(a) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(b) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982), and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $150 or more per acre, or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment by electronic fund transfer (EFT) utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS.

The RD will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids for the sale. Bidders are referred to 30 CFR 218.155.

11. Leasing Maps/Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps/Official Protraction Diagrams which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14).

(a) Outer Continental Shelf Leasing Maps--South Texas Set. This set of maps sells for $5.00.

Map 1	South Padre Island Area
Map 1A	South Padre Island Area, East Addition
Map 2	North Padre Island Area
Map 2A	North Padre Island Area, East Addition
Map 3	Mustang Island Area
Map 3A	Mustang Island Area, East Addition
Map 4	Matagorda Island Area

(b) Outer Continental Shelf Leasing Maps--East Texas Set. The following set of maps sells for $7.00.

Map 5	Brazos Area
Map 5A	Brazos Area, South Addition
Map 6	Galveston Area
Map 6A	Galveston Area, South Addition
Map 7	High Island Area
Map 7A	High Island Area, East Addition
Map 7B	High Island Area, South Addition
Map 7C	High Island Area, East Addition, South Extension
Map 8	Sabine Pass Area

(c) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14-3	Corpus Christi	(approved January 27, 1976)
NG 14-6	Port Isabel	(approved January 27, 1976)
NG 15-1	East Breaks	(approved January 27, 1976)
NG 15-2	Garden Banks	(approved December 2, 1976)
NG 15-4	Alaminos Canyon	(approved March 26, 1976)
NG 15-5	Keathley Canyon	(approved December 2, 1976)

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, bisected by administrative lines such as the Federal/State jurisdictional line, the section 8(g) line, or a combination of such lines. In these cases, the following supplemental documents to this Notice of Sale are available from the Gulf of Mexico Regional Office (see paragraph 14(a)).

(1) Western Gulf of Mexico Lease Sale 102 - Final. Unleased Split Blocks.

(2) Western Gulf of Mexico Lease Sale 102 - Final. Unleased Acreage of Blocks with Aliquots Under Lease.

(3) Western Gulf of Mexico Lease Sale 102 - Final. Unleased Blocks Split by the 8(g) Line.

(b) References to maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico Regional Office.

Map 1 entitled "Western Gulf of Mexico Lease Sale 102, Stipulations, Lease Terms, and Warning Areas, Final."

Map 2 entitled "Western Gulf of Mexico Lease Sale 102, Bidding Systems and Bidding Units, Final," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 102, Detailed Maps of Biologically Sensitive Areas, Final," pertains to areas referenced in Stipulation No. 2.

(c) In several instances two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their acreages appears on map 2.

(d) The areas offered for leasing include all those blocks shown on the Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a), (b), and (c), except for those blocks or partial blocks which are in water depths greater than 2,400 meters (as shown on map 1 above) and those blocks or partial blocks described as follows.

(1)

WESTERN GULF OF MEXICO LEASE SALE 102
WESTERN GULF OF MEXICO LEASED LANDS

Descriptions of Blocks Listed Represent All Federal Acreage Leased Unless Otherwise Noted

S. Padre Island	N. Padre Island (continued)	N. Padre Island, East Addition (continued)	Mustang Island (continued)	Mustang Island (continued)	Mustang Island, East Addition (continued)
1031					
1032	919		769	A-12	
1039	924	A-33	777	A-14	A-124
1040	927	A-40	778	A-15	A-129
1049	928	A-41	780	A-16	A-135
1062	946	A-42	781	A-18	A-138
1063	947	A-45	782	A-19	A-139
1069	956	A-46	783	A-20	A-140
1070	958	A-51	784	A-21	A-151
1104-	965	A-53	787	A-22	A-152
(Landward of	966	A-57	788	A-23	A-153
8(g) line)	967	A-58	791	A-25	A-162
1111	968	A-59	798	A-26	A-164
1112	969	A-61	800	A-30	
1125	976	A-65	803	A-31	Matagorda Island
1133	999	A-66	804	A-36	
	1000-	A-72	805		487
S. Padre Island,	(Landward of	A-78	809	Mustang Island,	518
East Addtion	8(g) line)	A-83	811	East Addition	519
	1006	A-84	813		520
1117	1007	A-93	814	734	526
A-62	1008		822	738	527
A-64	1031	Mustang Island	823	760	528
A-65			825	A-43	529
A-70	N. Padre Island,	727	827	A-51	554
A-71	East Addition	728	828	A-52	555
A-72		738	830	A-58	556
A-73	912	739	831	A-60	557
A-75	953	740	834	A-65	558
	970	742	835	A-83	565
N. Padre Island	974	743	836	A-84	566
	975	752	844	A-85	567
886	995	753	845	A-90	568
887	1011	754	846	A-94	569
888	1018	755	847	A-102	586
894	A-7	756	849	A-103	587
895	A-9	757	868	A-106	588
897	A-11	758	873	A-107	589
898	A-12	759	875	A-110	591
905	A-13	762	876	A-111	599
906	A-14	763	A-1	A-113	600
908	A-22	764	A-2	A-117	601
909	A-29	765	A-8	A-118	602
915	A-30	766	A-10	A-121	603
916	A-31	768	A-11	A-122	604

Matagorda Island (continued)
605
606
607
616
617
618
619
620
622
623
624
631
632
633
634-
(Seaward of
8(g) line)
635
636
638
639
640
649
651
652
653
654
655
656
657
663
664
665
666
667
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669
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696

Matagorda Island (continued)
697
698
699
700
701
702
703
704
705
710
711
712
713
715
716
717
718
A-1
A-4
A-7

Brazos
335
341
342
364-
(Landward of
8(g) line)
376-
(Landward of
8(g) line)
378
397
398
399
412
415
417
435-
(Seaward of
8(g) line)
436
437
438
439
449
450
451
452
453
455

Brazos (continued)
457
466
475
476
478
479
488
489-
(Landward of
8(g) line)
490
491
492
494
497
498
501
502
504
510
512
514
515
517
530
534
535
550
551
552
578
585
608
615
A-3
A-7
A-9
A-10
A-16
A-17
A-19
A-20
A-22
A-23
A-24
A-28
A-30
A-33
A-34
A-37
A-38
A-39

Brazos (continued)
A-40
A-41

Brazos,
South Addition
A-47
A-50
A-52
A-53
A-54
A-65
A-66
A-67
A-68
A-70
A-73
A-74
A-76
A-78
A-79
A-89
A-102
A-105
A-118
A-119
A-132
A-133

Galveston
144
151
180
181
189 (SE¼)
190 (W½)
191-
(Portion seaward
of 8(g) line)
192
209
210
211
213
223
239
241
242-
(Landward of
8(g) line)

Galveston (continued)
243-
(Landward of
8(g) line)
255
257
270
271
272-
(Seaward of
8(g) line)
274
282
288-
(S½NE¼NE¼;
SE¼NW¼NE¼;
S½NE¼;
E½E½SW¼; SE¼)
289-
(SW¼NW¼NW¼;
W½SW¼NW¼;
SE¼SW¼NW¼;
SW¼SE¼NW¼;
SW¼; W½SE¼)
295-
(S½NE¼NE¼;
NW¼NE¼;
W½SW¼NE¼;
NE¼SW¼NE¼;
N½SE¼NE¼;
W½; W½NW¼SE¼;
S½SE¼)
296-
(NE¼;
NE¼NE¼NW¼;
S½NE¼NW¼;
S½SW¼NW¼;
SE¼NW¼;
N½S½;
NE¼SW¼SW¼;
N½SE¼SW¼;
N½SW¼SE¼;
SE¼SE¼)
298
300
301
302
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318
319

Galveston (continued)
320
321
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461
464
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503
A-3
A-4
A-16
A-18
A-20
A-24
A-35
A-37
A-38
A-57
A-58

Galveston (continued)

A-84
A-97
A-99
A-111
A-113

Galveston, South Addition

A-114
A-115
A-116
A-126
A-127
A-129
A-131
A-142
A-156
A-162
A-178
A-192
A-194
A-217
A-219
A-224
A-226
A-227
A-248
A-252
A-253

High Island

19
20
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High Island (continued)

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72
86
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90
92
93
94
95
96
105
106
110
111
113
114
115
116
117
133
134
135-
(N½; N½S½;
SW¼SW¼
W½SE¼SW¼;
NE¼SE¼SW¼;
N½S½SE¼)
136-
(E½; E½NE¼SW¼;
S½SE¼SW¼)
138
139
140
141 (E½)
142
143
154
155 (W½)
158
159
160-
(NE¼; NE¼NW¼;
E½SE¼NW¼;
N½SE¼;
N½SE¼SE¼)

High Island (continued)

161-
(NW¼NE¼NW¼;
S½NE¼NW¼;
W½NW¼;
SE¼NW¼;
NE¼NE¼SW¼;
W½NE¼SW¼;
NW¼SW¼;
NW¼SW¼SW¼)
162
163
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179
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199
200
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260
A-1
A-3
A-6
A-7
A-12
A-14
A-19
A-20
A-21
A-22
A-24

High Island (continued)

A-34
A-38
A-39
A-45
A-60
A-62
A-64
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A-68
A-69
A-82
A-83
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A-100
A-103
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A-120
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A-123
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A-139
A-141
A-142
A-149
A-152
A-155
A-156
A-157
A-161
A-162
A-165

High Island, South Addition

A-411
A-412
A-413
A-414
A-415
A-416
A-417

High Island, South Addition (continued)

A-422
A-424
A-433
A-435
A-437
A-438
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A-499
A-500
A-501
A-502

High Island, South Extension (continued)

A-503
A-506
A-507
A-508
A-510
A-511
A-515
A-517
A-520
A-521
A-523
A-526
A-530
A-531
A-532
A-536
A-537
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A-545
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A-564
A-566
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A-568
A-569
A-570
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A-572
A-573
A-574
A-577
A-578
A-579
A-582
A-585

High Island, South Addition (continued)

A-586
A-587
A-588
A-589
A-591
A-594
A-595
A-596

High Island, East Addition

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A-170
A-171
A-172
A-173
A-174
A-176
A-178
A-179
A-181
A-185
A-192
A-193
A-194
A-198
A-214
A-215
A-231
A-236
A-237
A-240
A-241
A-244

High Island, East Addition (continued)

A-256
A-257
A-258

High Island, East Addition, South Extension

A-267
A-268
A-269
A-270
A-271
A-273
A-274
A-276
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A-330

High Island, East Addition, South Extension (continued)

A-332
A-334
A-335
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A-396
A-399
A-400
A-401
A-402
A-403

Sabine Pass

17
18
40
44

Corpus Christi

569
570
700
743
744
920
921
964
965
1008

East Breaks

74
106
107
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East Breaks (continued)

171
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173
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211
217
239
244
245
250
251
252
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368

East Breaks (continued)

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421
425
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469
470
487
492
512
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531
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579
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600
602
623
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625
626

Garden Banks

21
27
28
29
30
31
65
72

Garden Banks (continued)

73
74
75
77
82
83
84
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103
104
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193
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203
212
213

Garden Banks (continued)

221
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224
225
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341
343
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369
373
378
379
382
387
388
405
411
412
413
416

Garden Banks (continued)

417
423
424
425
427
451
452
453
456
457
469
471
494
498
499
500
537
538
543
544
545
581

Port Isabel

38
39
123
130
131
166
167
174
175
214
217
218
258
562
563
564
606
607
654
697
698

(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks:

Blocks A-375 and A-398.

(3) Although currently unleased and shown on Official Protraction Diagrams or Leasing Maps as indicated, no bids will be accepted on the following blocks:

South Padre Island Area, Texas Map No. 1, Block 1163

South Padre Island Area, East Addition, Texas Map No. 1A, Blocks 1162 through A-90

Port Isabel - NG 14-6, Blocks 948 through 968 and 991 through 1012

Alaminos Canyon - NG 15-4, Blocks 925 through 942 and 969 through 1009

Keathley Canyon - NG 15-5, Blocks 969 through 978.

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on map 1 and will be on Form MMS-2005 (August 1982). Copies of the lease form are available from the Gulf of Mexico Regional Office.

(b) The applicability of Stipulations Nos. 1 through 4 that will be included in leases resulting from this sale is as shown on map 1 and supplemented by references in this Notice.

Stipulation No. 1--Protection of Cultural Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archaeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes a cultural resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archaeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent cultural and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operations so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RD that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the cultural resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Protection of High Relief Banks.

(This stipulation will be included in leases located in the areas so indicated on maps 1 and 3 described in paragraph 12. The high relief banks with their appropriate "no activity" isobaths are listed below.)

Bank Name	Isobath (meters)
Mysterious Bank[1]	74, 76, 78, 80, 84
Blackfish Ridge[1]	70
Dream Bank[2]	78, 82
Southern Bank[2]	60
Hospital Bank[2]	70
North Hospital Bank[2]	68
Aransas Bank[2]	70
South Baker Bank[2]	70
Baker Bank[2]	70
Big Dunn Bar[1]	65
Small Dunn Bar[1]	65
32 Fathom Bank[1]	52
Stetson Bank	62
Claypile Bank[1]	50
Applebaum Bank	85
Coffee Lump[4]	Various
West Flower Garden Bank[4]	100 (defined by ### system)
East Flower Garden Bank[4]	100 (defined by ### system)
MacNeil Bank	82
29 Fathom Bank	64
28 Fathom Bank	85
Geyer Bank	85
Elvers Bank[3]	85
Bright Bank[3]	85
18 Fathom Lump[3]	85
Rezak Bank[3]	85
Sidner Bank[3]	85
Parker Bank[3]	85

[1] Low Relief Banks - only paragraph (a) of the stipulation applies.

[2] Other South Texas Banks - paragraph (c) of the stipulation shall not apply; for production and development operations only, the provisions of paragraph (b) shall apply in both the "1-Mile Zone" and the "3-Mile Zone."

[3] Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in Western Gulf of Mexico.

[4] Flower Garden Banks - has a "4-Mile Zone" rather than a "3-Mile Zone"; in the "1-Mile Zone," paragraph (c)(2) of the stipulation shall apply in addition to paragraph (b); in the "4-Mile Zone," only paragraph (b) shall apply.

(a) No structures, drilling rigs, pipelines, or anchoring will be allowed within the isobaths (i.e., the "no activity zone" shown on map 3) of the banks listed above.

(b) Operations within the area shown as "1-Mile Zone" on map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "3-Mile Zone" on map 3 shall be restricted as specified in either (1) or (2) below at the option of the lessee.

(1) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(2) The operator (lessee) shall submit a monitoring plan. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified, independent scientific personnel, and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Regional Director (RD) on a schedule established by the RD, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the RD shall require shunting as specified in subparagraph (1) above or other appropriate operational restrictions.

Stipulation No. 3--Military Warning Areas.

(This stipulation will be included in leases located within each warning area, as shown on map 1 described in paragraph 12.)

Warning Areas Command Headquarters
Western Planning Area

Warning Areas	Warning Areas Command Headquarters
W-228	Naval Air Training Command Naval Air Station Corpus Christi, Texas
W-66C	Director of Training Deputy Chief of Staff, Operations Headquarters Strategic Air Command Offutt AFB, Nebraska

(a) Hold Harmless

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property which occurs in, on, or above the Outer Continental Shelf (OCS), to any person or persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table above.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table above to the degree necessary to prevent damage to or unacceptable interference with Department of Defense flight, testing, or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational Controls

The lessee agrees that, prior to operating, or causing to be operated on its behalf, boat or aircraft traffic in individual, designated warning areas, the lessee shall coordinate and comply with instructions from the commander of the individual command headquarters listed in the table above. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

Stipulation No. 4--8-Year Lease Term.

(This stipulation will be included in leases on blocks in the 400-meter to 900-meter depth range as shown on map 1.)

For each oil and gas lease in the 400-meter to 900-meter water depth range the lessee must commence the drilling of an exploratory well within 5 years of the date the lease becomes effective. The exploratory well shall meet the depth and other criteria established in an approved exploratory plan.

14. Information to Lessees.

(a) Information on Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit at the address stated in paragraph 2, either in writing or by telephone (504) 838-0519 or 838-0527. For additional information, contact the Regional Supervisor for Leasing and Environment at the address stated in paragraph 2 or by telephone at (504) 838-0755 or 838-0765.

(b) Information on Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et. seq.). U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

Prospective bidders should be aware of a Coast Guard study of port access routes in the Gulf of Mexico. Notice of this study was published in the Federal Register on March 19, 1984, at 49 FR 10127, with additional references on April 12, 1984, at 49 FR 14538, and on July 10, 1984, at 49 FR 28074. The purpose of this study was to evaluate alternative routing measures for the Galveston Approach area. In the Western Gulf of Mexico, the following blocks in the High Island Area (Maps 7 and 7A of the East Texas Set) were affected:

A-40 to A-48; A-52 to A-59; A-61; A-67 to A-68; A-70 to A-80; A-212 to A-214; and A-219 to A-223.

The results of this Coast Guard study were published as a Notice in the Federal Register on March 11, 1985, at 50 FR 9682.

For additional information, prospective bidders should contact Lt. Commander F. V. Newman, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130 (Phone: (504) 589-6901).

Prospective bidders should be aware of the MMS-permitted lightering facility located in the Mustang Island Area, Blocks 825, 826, and 827.

(c) Information on MOU with DOT on Pipelines. Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding (MOU) dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Information on Unitization. Bidders are advised that, in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate or a net profit share payment.

(e) Information on 10-Year Leases. For those blocks identified as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(f) Information on Affirmative Action. Revision of Department of Labor regulations on Affirmative Action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action forms.

(g) Information on Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on map 1 described in paragraph 12. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi disposal area range from approximately 600 to 900 meters. Water depths in the East Breaks disposal area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(h) Information on Shallow Hazards. Federal regulation (30 CFR 250.34) requires a lessee to conduct shallow hazards and other geological and geophysical surveys that are necessary for the evaluation of activities to be carried out under a proposed exploration or development/production plan or activities being carried out under an approved plan.

Data collection by the lessee on a lease, and when necessary, off a lease, will be analyzed and submitted by the lessee and then reviewed and, when necessary, reanalyzed by the RD to ensure that drilling, development, and production activities can be conducted in an acceptable manner with minimum risk or damage to human, marine, and coastal environments. Based on the review and analysis of the data received and other available data and information, the RD either approves or requires modification to an exploration or development/production plan or application for permit to drill, or recommends that the Director, MMS, temporarily prohibit or suspend the conduct of exploration or development/production activities, according to provisions of the OCS Lands Act, as amended, and appropriate regulations. Existing regulations authorize the RD to take whatever steps are necessary to assure safe operations offshore, whether shallow hazards are delineated before or after the lease sale.

(i) Information on Stipulation No. 4. Any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, if, within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect, etc. For further information, see Federal Register Notice (50 FR 13289) published April 3, 1985, subject: "Notification of Outer Continental Shelf (OCS) Programwide Policy of Water-Depth Criterion for Longer Primary Lease Terms for OCS Oil and Gas Leases."

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

16. Bid Adequacy Procedures.

(a) The following information is provided to lessees on technical modifications to the bid adequacy procedures.

(1) The development of block and bidding unit (hereinafter referred to as block or blocks) evaluation inputs for drainage and development blocks will be shifted, when possible, to the presale period.

Since drainage and development blocks are quite likely to receive bids, the presale work will result in little wasted effort and would allow earlier decisions on acceptance of such bids.

(2) Nonviability determinations in Phase 1 for wildcat and proven blocks receiving three or more adjusted bids will be discontinued.

(3) The average number of bids parameter in Phase 1 will be calculated using only viable wildcat and proven blocks receiving one or two adjusted bids and all wildcat and proven blocks receiving three or more adjusted bids.

The change conforms with (2) above.

(4) The Geometric Average Evaluation of the Tract (GAEOT) in Phase 2 will only be applied to wildcat and proven blocks receiving two adjusted bids and all blocks receiving three or more adjusted bids. The GAEOT will not be applied to two-bid drainage and development blocks.

This change eliminates the anomalous situation in which a high bid on a drainage and development block is rejected because of a second high bid close to the high bid whereas it would have been accepted if the second high bid was much less. Acceptance or rejection of bids on two-bid drainage and development blocks will be based on the Mean of the Range of Values (MROV) and Discounted Mean of the Range of Values (DMROV) without averaging, which is appropriate since the MMS has excellent data on development and drainage blocks.

The first three changes are procedural modifications designed to reduce workload requirements. The fourth change places more reliance on the MMS block value estimates on two-bid drainage and development blocks.

Previous changes in the February 1983 bid adequacy procedures were made in February, March, and July 1984. The following complete set of bid adequacy procedures incorporates those earlier changes and this most recent set of changes.

(b) The bid adequacy procedures provide for the application of criteria in a two-phased process for bid adequacy determination.

(1) Phase 1 provides for the application of criteria designed to partition blocks receiving bids into three general categories:

those receiving bids which the MMS has identified as being nonprospective (nonviable);

those where opportunities for strategic underbidding, information asymmetry, collusion, and other noncompetitive practices might most likely

occur and where the Government has the most detailed and reliable data; and

those where the competitive market forces can be relied upon to assure fair market value.

Based on these categories, the following three Phase 1 criteria are applied to all blocks receiving bids:

High bids on all blocks classified by the MMS as being either development or drainage will be referred directly for further evaluation in Phase 2.

All legal high bids judged by the MMS not to be located on a viable prospect will be accepted.

After screening for anomalous bids, all legal high bids will be accepted for wildcat and proven blocks receiving three or more bids and more than the average number of bids for viable wildcat and proven blocks receiving one or two adjusted bids and all wildcat and proven blocks receiving three or more adjusted bids, i.e., whichever is more.

(Note: Anomalous bids will not be included in the bid number in either Phase 1 or Phase 2. Anomalous bids include all but the highest bid submitted for a block by the same company, bidding alone or jointly, and the lowest bid on a block when it is less than one-eighth of the next lowest bid. The "one-eighth rule" can exclude no more than one bid for a given block.)

After applying the Phase 1 criteria for bid acceptance, the RD, if he should determine that an unusual bidding pattern exists and affects blocks which would be accepted by the Phase 1 criteria, and if the unusual bidding pattern can be documented, has the discretionary authority, after consultation and coordination with the Solicitor, to pass those blocks so identified to Phase 2 for further analysis.

Phase 1 is conducted block-by-block and is generally completed within 3 days of the bid opening.

(2) Phase 2 provides for the application of criteria designed to further determine bid adequacy on a block-specific basis. All prospective wildcat and proven blocks which are not accepted in Phase 1 are passed to Phase 2 for further evaluation. After further mapping and/or analysis are completed in Phase 2, the viability determinations of these blocks can be reviewed, using the same procedures to determine viability that were applied in Phase 1. Those wildcat and proven blocks which are subsequently determined to be nonviable can be eliminated from the set of blocks undergoing a full-scale MONTCAR run and the high bids on them accepted. All of the remaining blocks, including all drainage and development blocks, receive further evaluation by comparing the high bids with the MRDV and the LMRDV. All blocks in Phase 2 which received three or more adjusted bids and wildcat and proven blocks which received two adjusted bids will be compared to the GAEDT. In addition, if in the judgement of the RD a block is or may be subject to drainage, the relevant costs due to delays associated with bid rejection are considered in the bid adequacy determination. While it is expected that most evaluations would be undertaken based upon geological and geophysical data and analyses available at the time of the sale, additional analyses can be undertaken postsale at the discretion of the RD.

The bid adequacy recommendations developed in Phase 2 are normally completed sequentially over a period ranging between 3 and 60 days after the sale. The RD has the discretionary authority to extend this period up to 90 days after the sale when necessary to assure a thorough evaluation.

Acting Director, Minerals Management Service
John B. Rigg

Approved:

Secretary of the Interior
Ann McLaughlin

Date

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Western Gulf of Mexico

Notice of Leasing Systems, Sale 102

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 102, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and

imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 102) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico (Sale 102) Bidding Systems and Bidding Units, Final." This map is available from the Minerals Management Service, Gulf of Mexico Region, 3301 North Causeway Boulevard, Metairie, Louisiana 70002.

Acting Director John B. Rigg

Approved:

Acting Secretary of the Interior

JUN 28 1985

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34 27560
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533 26998
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553 27589
570 27589

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Proposed Rules:

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571 ..... 27032, 27632, 27633

50 CFR

17 26999

Proposed Rules:

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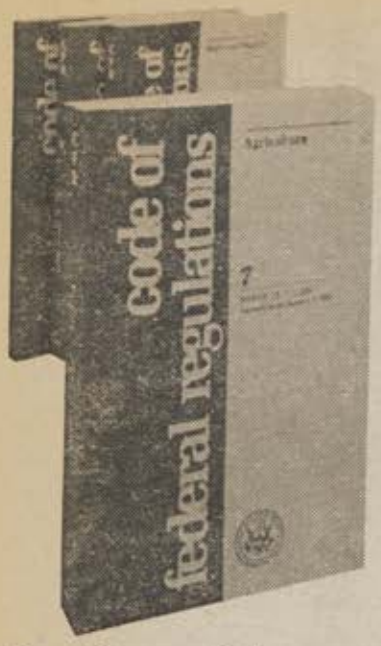
20 27638
630 27470
662 27470

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 2, 1985



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Revised as of April 1, 1985

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	Internal Revenue		
_____	Pt. 1 (§§ 1.0-1—1.169) (Stock No. 822-004-00073-3)	21.00	_____
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